

# **NAVAL POSTGRADUATE SCHOOL**

## **Monterey, California**



## **THESIS**

**THE LAW ENFORCEMENT APPROACH TO  
COMBATING TERRORISM:  
AN ANALYSIS OF US POLICY**

by

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June 2002

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## REPORT DOCUMENTATION PAGE

Form Approved OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.

1. AGENCY USE ONLY ( <i>Leave blank</i> )	2. REPORT DATE June 2002	3. REPORT TYPE AND DATES COVERED Master's Thesis
4. TITLE AND SUBTITLE: The Law Enforcement Approach to Combating Terrorism; An Analysis of US Policy		5. FUNDING NUMBERS
6. AUTHOR(S) Nagel, William C.		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000		8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A		10. SPONSORING/MONITORING AGENCY REPORT NUMBER
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.		
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited		12b. DISTRIBUTION CODE
13. ABSTRACT ( <i>maximum 200 words</i> ) →→This thesis examines the US policy for combating terrorism from 1988 to 2000 using five case studies; the bombing of Pan Am flight 103, the bombing of the World Trade Center in 1993, the bombing of the US barracks in Saudi Arabia in 1996, the bombings of two US embassies in Africa in 1998 and the bombing of the USS Cole in 2000. The thesis begins by outlining the minimum requirements for a counter-terrorism policy. They are; that a policy must either deter terrorists from attacking the US or, failing that, successfully defend against terrorists who cannot be deterred. Next, the thesis examines the history and development of the law enforcement approach to combating terrorism and a few of the events that set the conditions for its ascendancy to the forefront of US policy. After establishing the conditions for its dominance, the thesis takes an in-depth look at the US response in the aftermath of each of the five terrorist attacks. The final chapter compares the demonstrated performance of the policy in the aftermath of the five bombings with the basic requirements for a counter-terrorist policy to determine the effectiveness of the policy as a whole.		
14. SUBJECT TERMS Terrorism, US Policy, Law Enforcement		15. NUMBER OF PAGES 75
16. PRICE CODE		
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified
20. LIMITATION OF ABSTRACT UL		

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AN ANALYSIS OF US POLICY**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF SCIENCE IN DEFENSE ANALYSIS**

from the

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## **ABSTRACT**

This thesis examines the US policy for combating terrorism from 1988 to 2000 using five case studies; the bombing of Pan Am flight 103, the bombing of the World Trade Center in 1993, the bombing of the US barracks in Saudi Arabia in 1996, the bombings of two US embassies in Africa in 1998 and the bombing of the USS Cole in 2000. The thesis begins by outlining the minimum requirements for a counter-terrorism policy. They are; that a policy must either deter terrorists from attacking the US or, failing that, successfully defend against terrorists who cannot be deterred. Next, the thesis examines the history and development of the law enforcement approach to combating terrorism and a few of the events that set the conditions for its ascendance to the forefront of US policy. After establishing the conditions for its dominance, the thesis takes an in-depth look at the US response in the aftermath of each of the five terrorist attacks. The final chapter compares the demonstrated performance of the policy in the aftermath of the five bombings with the basic requirements for a counter-terrorist policy to determine the effectiveness of the policy as a whole.

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## **ACKNOWLEDGMENTS**

I began work on this thesis in July 2001. At the time, it was to be a critical analysis of then-current US counter-terrorism policy. The events of September 11, 2001 changed both the purpose of my thesis and US policy forever. After much contemplation I decided that the research was still relevant and, perhaps, even more important in the aftermath of the attacks.

I would like to thank Dr. Gordon McCormick for his ideas and guidance. I also owe a debt of gratitude to my parents, my classmates and the other SOLIC professors for their encouragement, critiques and support. Finally, to my wife, thank you for your understanding during the writing of this thesis and your constant love.

This thesis is dedicated to the many Americans who have given their lives for this great nation.

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## I. INTRODUCTION

In the year 2000, the National Commission on Terrorism completed its report concerning the status of US counter-terrorist efforts titled “Countering the Changing Threat of International Terrorism”. This report was congressionally mandated to evaluate “America’s laws, policies and practices for preventing and punishing terrorism directed at American citizens” (Countering the Changing Threat, p. 2). L. Paul Bremer, the chairman of the committee chose to begin his report with a passage written by Thomas C. Schelling in the forward to *Pearl Harbor: Warning and Decision*, by Roberta Wohlstetter. Schelling observed that;

Surprise, when it happens to a government, is likely to be a complicated, diffuse, bureaucratic thing. It includes neglect of responsibility but also responsibility so poorly defined or so ambiguously delegated that action gets lost. It includes gaps in intelligence, but also intelligence that, like a string of pearls too precious to wear, is too sensitive to give to those who need it.... It includes the contingencies that occur to no one, but also those that everyone assumes somebody else is taking care of.... It includes, in addition, the inability of individual human being to rise to the occasion until they are sure it is the occasion, which is usually too late. Finally, as at Pearl Harbor, surprise may include some measure of genuine novelty introduced by the enemy, and possibly some sheer bad luck. (As cited in Countering the Changing Threat, p. 1)

Tragically, on September 11, 2001, the United States was again surprised by an attack of such proportions as to evoke comparisons to Pearl Harbor. The very people discussed in Ambassador Bremer’s report had, again, attacked the United States.

### A. THE LAW ENFORCEMENT APPROACH

Many have asked why nothing was done before September 11, 2001 to deal with the threat terrorists posed, or why past attempts to deter and defend against terrorists had evidently failed. The answers to these questions will be overshadowed by the more immediate question of what needs to be done in response to these latest attacks, and rightly so. But the original questions remain and, eventually, will be asked again. The United States has a long history of dealing with terrorism. The policies of the US government have changed and evolved with the threat itself. Most people can recall

incidents going back to the Iranian Hostage crisis in 1979-1980, which lasted 444 days, but few can recall what the official responses were to this and the many other occurrences of terrorism in the twenty years since the Iranian Hostage Crisis. Since the destruction of Pam Am flight 103 over Lockerbie, Scotland, the United States has primarily focused on finding people who have committed terrorist acts and bringing them to the US to stand trial for their crimes. Additionally, Congress has passed domestic laws against terrorist acts, and the executive branch has worked through the State Department to gain international support for conventions against terrorism. These efforts, but primarily the focus on prosecuting the people who carry out these attacks, constitute the law enforcement approach to combating terrorism. This approach is the subject of my analysis. My purpose is to determine if a law enforcement approach to combating terrorism, as executed by the United States from 1988 to 2001, met the needs of the US to properly respond to terrorist attacks directed against the US.

## B. DEFINING TERRORISM

In order to facilitate any discussion of terrorism, it is first necessary to define the term. It seems that every author of an essay or book on terrorism feels the need to spend considerable space going over the various definitions and their relative merits. Suffice it to say that one of the problems inherent in a debate on the subject is the very definition of the term *terrorism*. In fact, fine variations in the specifics of the definition precipitated creation of the law enforcement approach evaluated in this effort. For purposes of brevity, and in order to focus on more pertinent issues, I will defer to the in-depth analysis of David Tucker in his book, *Skirmishes at the Edge of Empire* (1997). Tucker devotes a whole chapter to comparing the relative merits of no less than seven definitions of the term used by various organizations of the US Government. The definition used in this research will be as follows; *terrorism is premeditated, politically motivated violence against noncombatant targets by sub-national and or clandestine agents intended to influence an audience*. Furthermore, this analysis is concerned only with acts of international terrorism directed against the US, as opposed to domestic terrorism such as the 1995 bombing of the Murrah Federal Building in Oklahoma City.

In addition to the debate about the definition of terrorism, another controversy, over the effectiveness of the law enforcement approach in combating it, has continued for

over fifty years. This continuing debate on how to deal with international terrorists is one with many facets and subplots. Each nation makes laws about domestic terrorism based on its own legal traditions. Problems arise when nations with differing legal traditions and histories try to reach a consensus on how to deal with terrorists who commit acts worldwide or from one nation to another. The differences between nations affect the ability of the community of nations to reach a consensus on how to define and react to international terrorism. Within the United States, elected officials and policy makers have trouble reaching a consensus on terrorist policy because of differences in their political orientation, religious beliefs, ethics and worldview. Other tactics utilized by the US in the past to deal with terrorists have included; making no concessions to their demands, diplomatic negotiations with terrorist groups or nations which support terrorists, economic sanctions against nations supporting terrorists, and military strikes against nations or the terrorists themselves. These approaches have succeeded or failed to varying degrees, but for the last thirteen years, the US government has primarily depended on the law enforcement method for dealing with terrorists.

### **C. DEFINING A POLICY**

The terrorist attacks of September 11, 2001 might prompt one to hastily conclude that previous counter-terrorist strategies were not effective. Simply basing this judgment on one episode is not sufficient. In order to realistically evaluate US counter-terrorist strategy, we must look for patterns that existed prior to September 2001 and analyze them to gain insight into the effectiveness of the whole strategy. To begin with, what does the US need in a policy for combating terrorism? Put in the simplest terms possible, a policy for combating terrorism must effectively deter acts of terrorism against the US. Failing that, the policy must actively defend against terrorist attacks committed by those who cannot be deterred.

The American Heritage Dictionary defines the word *deter* as “to prevent or discourage from acting, as by means of fear or doubt” (2000). A policy for combating terrorism must prevent terrorists from acting against the United States for fear of the consequences of that action. Denial based deterrence attempts to convince terrorists that they cannot accomplish their goals at an acceptable operational cost. Punishment-based deterrence seeks to inflict enough pain in response to an attack as to make it unattractive

as an option (Watman and Wilkening, 1995, p 16). The goal of deterrence is to modify their behavior, not necessarily their beliefs.

*Defend* is defined as “to make or keep safe from danger, attack or harm” (AHD, 2000). Defense can be active or passive. Active measures consist of identifying planned attacks before they occur and ensuring that they are not successful, thus keeping Americans safe from terrorism. This requires detailed intelligence and a proactive posture to deal decisively with impending attacks. An active defense is very different from a passive defense. Strictly speaking, passive defense is the hardening of potential terrorist targets so as to render the target impervious to attack. Passive measures could include military force protection, increased security at government buildings or background checks of employees and visitors to potential targets.

#### **D. CASE STUDIES**

This study will examine the US response to five large-scale, international terrorist attacks against Americans from 1988 to 2001: the 1988 bombing of Pan Am flight 103, the 1993 bombing of the World Trade Center (WTC) in New York City, the 1996 bombing of US Air Force barracks in Saudi Arabia, the near simultaneous bombings of two US Embassies in Kenya and Tanzania in 1998, and the 2000 bombing of the USS Cole in the Yemeni port of Oman. A survey of the statistics provided in the State Department’s Patterns of Global Terrorism, for the years 1988-2000, reveals that these five attacks account for 76% of the total American fatalities and 86% of the American wounded in *international* terrorist attacks during the time period (Patterns of Global Terrorism, 1988-2000). The target of each attack (a US commercial airplane, the World Trade Center, a US military barracks overseas, US embassies and a US Navy warship) was a symbol of America, and therefore a target with symbolism above and beyond the people it contained. Each attack took place when the law enforcement approach was the predominant policy of the US against terrorism, and the responses to each attack were formulated using this approach. Chapter 2 will detail the history of the law enforcement approach, from the creation of the United Nations through the Reagan Administration and up to the destruction of Pan Am flight 103. Chapter 2 will also describe critical changes in the nature of international terrorism during that time. Chapters 3 through 7 will examine each of the five international terrorist attacks listed above. Although the

1993 attack on the WTC might be considered a domestic terrorism case, it is included here because the State Department classifies international terrorism as “involving citizens or the territory of more than one country” (Patterns of Global Terrorism, 2001, p. vi). Chapter 8 will return to the basic premise that a policy must deter and defend against terrorism and use these measures of effectiveness as yardsticks to determine if the US response to these attacks, using the law enforcement approach, has been effective in combating terrorism.

This analysis does not examine every terrorist incident that occurred during the selected time frame. As stated earlier, the purpose of this work is to examine America’s policy through its response to the most significant attacks that occurred while the law enforcement approach dominated. The reader might wonder why events such as the evident thwarting of attacks planned to coincide with the millennium celebrations at the end of 1999 are not examined as part of this study. While the capture of Ahmed Ressam at the Canadian border near Seattle was definitely critical from the standpoint of stopping a potential terrorist attack, the heightened security surrounding this relatively short period of time must be considered an anomaly. The fact that this increased security posture was only implemented for the impending celebrations keeps this case from representing the “norm” with respect to counter-terrorist strategy during this period.

#### **E. WHY EXAMINE RESPONSES TO TERRORIST ATTACKS?**

It can be argued that, because of the political limitations associated with policy decisions in the US government, the most permissive time to effect US counter-terrorist strategy is in the aftermath of a terrorist attack. Every time international terrorists attack Americans, a window of opportunity opens during which the President has behind him the moral support of the US population. The more significant the attack, the larger the window opens. This window of opportunity begins to close almost immediately. As time passes, the response options open to the government become fewer and fewer. Therefore, the point in time when the president has the least support for affecting US counter-terrorist policy is just before an attack, when the last attack is the most distant in public memory. However, once an attack has occurred, the President may take the most significant steps to either reinforce existing policy, or establish new policy. Furthermore, once changes have been made, they become institutionalized and may be repeated easier

in the future. It is for this reason that this study will focus on how the US chose to respond to these five terrorist attacks.

#### **F. WHY THIS STUDY IS IMPORTANT**

This examination, of what might be considered an out of date policy, is important for a couple of reasons. The United States has lost too many people to terrorism and, despite having more counter-terrorist capabilities than most nations; the priority for terrorism has been consistently placed below other problems in the past. After the terrorist attacks of September 11, 2001, indications are, that the focus of US policy will no longer rely solely on the law enforcement method. As the memories of September 11 fade, arguments for a return to strictly law enforcement approaches to combating terrorism will gain acceptance. A thorough understanding of the advantages and disadvantages of the law enforcement approach will allow policy makers to compare it to responses during the post- September 11 period and, potentially, to make better decisions about how to best shape our policy in the future.

## **II. HISTORY OF THE LAW ENFORCEMENT APPROACH**

### **A. INTRODUCTION**

The law enforcement approach, as implemented by the United States Government between 1988 and 2000, did not spring complete from the mind of a single person. Its development was a result of many years of attempts by the US and the international community to define and respond to terrorism. Additionally, in the late 1980's several non-related events created circumstances that pushed the law enforcement approach from being one of many options to the primary option of the US Government. This chapter will outline the history of US and international attempts to define and regulate international terrorism and trace the development of the law enforcement approach to combating terrorism, as exercised by the US Government.

### **B. EARLY ATTEMPTS TO DEFINE TERRORISM**

In the decades after World War One, the establishment of the League of Nations created the first international body to address terrorism in modern times. After a sharp increase in terrorism in the post-war years, the assassination of King Alexander of Yugoslavia in France in 1934 finally pushed the League of Nations to action. *The Convention for the Prevention and Punishment of Terrorism*, completed in 1937, defined terrorism as “criminal acts directed against a state and intended to create terror in the minds of a particular person, or a group of persons or the general public” (Moore & Turner, 1990, p. 447). This very broad definition made the convention both a help and potential hindrance to many nations and, therefore, only one member of the League of Nations ratified the convention.

Almost twenty years later, in 1954, the United Nations also tried to write legislation that would outlaw terrorism. That year, the International Law Commission drafted the *Code of Offenses Against the Peace and Security of Mankind*. The draft *Code*, again, broadly defined terrorism, this time as “the undertaking or encouragement by the authorities of a State of terrorist activity in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State” (Moore & Turner, 1990, p. 447). The draft *Code* also made these acts an

offense against mankind and a crime under international law. As with the convention of 1937, the 1954 document has never been adopted by the UN because of the inability of member nations to agree to this definition of terrorism.

As the failure of these early documents demonstrates, a consensus on defining international terrorism and successfully legislating against it has been, at best, a nearly impossible goal to achieve. In his book on national security law, John Murphy discusses these early attempts to define and outlaw “terrorism” in its entirety. He correctly identifies the logical next step taken by the UN and other multi-national bodies, noting that “because of its inability to agree on a definition of international terrorism, the world community has attempted to resolve the problem of definition by ignoring it and focusing instead on identifying particular criminal acts to be prevented and punished” (Moore & Turner, 1990, p. 447). Identifying and outlawing particular acts of terrorism, while satisfying the particular desires of affected nations, was piecemeal in its approach and required constant refining with new legislation. The result was that, at least initially, there was no international treaty that specifically addressed a creative new form of terrorism when it appeared. Admittedly, while this situation was not ideal, it did give the UN and other multi-national organizations a way to actually agree on and pass treaties responding to terrorism.

### **C. GROWTH OF INTERNATIONAL TREATIES**

The best examples of this treaty-based approach are twelve international agreements formulated under the United Nations. Beginning in 1963, and continuing to the current year (2002), the United Nations has written and ratified a total of twelve international treaties dealing with specific acts of international terrorism. Because of the problems identified by Professor Murphy, each treaty is very limited in its scope, only identifies certain acts as terrorism, and avoids any general definition of terrorism. A student of terrorism, especially terrorism directed against the United States, would quickly recognize a pattern linking the topic of a particular treaty to the most prevalent form of terrorism at the time the treaty was written. For example, three treaties dealing with civil aviation safety and hijacking of aircraft, signed in 1963, 1970, and 1988 respectively, coincide with the earliest attempt at aircraft hijacking (1963) and two later periods (late 1960s and mid-1980s) that saw a resurgence in its use by terrorists. Another

example is the 1988 treaty dealing with maritime hijacking written shortly after the October 1985 takeover of the cruise ship, *Achille Lauro*.

#### **D. EARLY US RESPONSES**

The first efforts by the US government to create organizations within the federal government to deal with terrorist incidents and formulate policy came in the early 1970s. These efforts began in the aftermath of the 1972 massacre of Israeli athletes at the Munich Olympics. Successive US Presidents reorganized and renamed committees and slowly built up a body of policies, which can collectively be called the principles of US counter-terrorist strategy.

##### **1. President Nixon**

President Nixon responded to the Munich massacre by ordering, first, the creation of an intelligence committee and, later, a Cabinet-level committee concerned with combating terrorism. The head of the committee's working group was named the Special Assistant to the Secretary of State for Combating Terrorism. His job was to work with the committee to coordinate counter-terrorist efforts, evaluate counter-terrorist programs and make recommendations for the funding of these efforts. One significant policy that resulted from the efforts of this committee was the decision that the United States would make no concessions to terrorist's demands. This policy was first made public in 1973, after the kidnapping of several Americans by the Black September organization. When President Nixon stated publicly that terrorists would not blackmail the US, the Black September Organization killed the Americans. Despite this outcome, the US stuck by its decision and "no concessions" became a standard part of US counter-terrorism policy. The second significant policy that grew out of the Nixon Administration was the decision to support the international conventions against terrorist acts mentioned earlier.

The great majority of terrorist incidents against Americans during the early 1970s consisted of kidnapping or taking hostage individuals or small groups of Americans. The US response consisted of working through the host government to resolve the issue, sometimes successfully. By the end of the Nixon years, the US had the beginnings of a strategy for dealing with international terrorism. The US, at this point, viewed terrorists

as criminals, would make no concessions to their demands, and supported international conventions against certain terrorist acts.

## **2. President Carter**

When President Jimmy Carter took office in 1976, he dissolved the Cabinet Committee and transferred its responsibilities to the National Security Council. He also designated, for the first time, “lead agencies” to handle terrorist incidents. These included the State Department for overseas incidents and the Justice Department for domestic incidents, with the Federal Aviation Administration taking over in the event of a domestic aircraft hijacking. The designation of lead agencies meant that, while they would handle actual incidents, the NSC (and its various sub-committees) would handle policy decisions. Later, during the Reagan Administration, changes in the law would result in the FBI becoming the de-facto lead agency in many overseas terrorist incidents. The later part of the 1970s saw a rise in incidents of state-sponsored terrorism. State-sponsored terrorism is the employment of free-lance terrorist groups by governments to accomplish political ends. Usually, the terrorist groups and the governments who supported them had some philosophical or ideological connection, such as support for the PLO or socialism/communism. Viewed through this lens, President Carter and his policymakers saw terrorism as, primarily, a political and diplomatic issue for the US. Evidence of this belief is found in the economic sanctions imposed on Libya by the US in 1978 and 1979, as a result of Libya’s support of terrorists.

In November 1979, the US encountered the first large-scale act of international terrorism directed solely against it in the modern era. The taking of 53 Americans hostage by Iranian students in 1979 was done with the tacit approval, if not outright support, of the Iranian Revolutionary government of the Ayatollah Khomeini. In keeping with its previous belief that terrorism was a political and diplomatic challenge, the Carter Administration tried to deal with Iran through negotiation, sanctions, and, finally, military action. Preoccupation with this matter distracted both the president and the American public, and led to Jimmy Carter’s loss in the 1980 presidential election. At the beginning of the 1980s, although the beginnings of a law-enforcement apparatus were now in place to deal with terrorism and the US had identified terrorists as criminals, the US Government had not tried to use law enforcement as a means to deal with terrorists.

### **3. President Reagan**

After the return of the hostages and the beginning of Ronald Reagan's administration, incidents of terrorism directed against the US did not abate and the new administration took steps to meet the emerging threat to US interests abroad. Initially, after the release of US hostages from Iran, the Reagan Administration responded with new background legislation. This included the 1982 refinement of Lead Federal Agency responsibility in handling terrorist incidents, both at home and abroad, and the 1983 establishment of the Antiterrorist Assistance Program that provided for training of other nations to deal with terrorist groups in their own countries (Public Report of the Vice President, 1986, p. 730). The goal of the Reagan Administration was to correct some of the problems encountered during the Carter years and set the stage for quicker military responses to hostage incidents. The terrorists, however, did not cooperate. In late 1983, they bombed both the US Embassy and the Marine Barracks in Beirut, killing scores of Americans, leaving no hostages to be rescued, and forcing the US to leave Beirut.

In April 1984, President Reagan authorized four bills to counter what he saw as a growing trend of state-sponsored terrorism. These included two pieces of enabling legislation for standing international conventions that had already been ratified by the US (Taking of Hostages and Aircraft Sabotage), a bill authorizing rewards for information on wanted terrorists and a bill outlawing support of terrorist organizations. At the time of their introduction to Congress, Reagan noted that they would "enhance the ability of the Department of Justice to *prosecute* persons involved in the support of terrorist activities and of states using terrorism" [emphasis added](Reagan, 1984). Most significantly, the 1984 Act for the Prevention and Punishment of Hostage Taking, which was meant as enabling legislation for an international convention, actually made it a crime to take an American hostage anywhere in the world. This law, as well as the 1986 Omnibus Anti-Terrorism Act, substantially expanded the powers of the FBI to investigate and arrest people who took Americans hostage overseas. This new authority for the FBI would have significant implications for US counter-terrorist policy in years to come.

The year 1985 saw terrorists strike again. This time US hostages were taken, however, in both the hijacking of TWA flight 847 and the hijacking of the cruise ship,

*Achille Lauro*, no terrorists were captured. Then-Vice President George Bush chaired a task force on combating terrorism created by President Reagan in the aftermath of these two incidents. The report of that task force, released in 1986, states that;

The US considers the practice of terrorism by any person or group a potential threat to national security....The United States will take measures to protect its citizens, property and interests...will act in a strong manner against terrorists without surrendering basic freedoms or endangering democratic principles. (Public Report of the Vice President, 1986, p. 729)

In this report, the only mention of a law enforcement approach in bringing terrorists to justice is at the end of a list of methods that includes, most predominantly, a discussion of military force options. Interestingly, two of the recommendations of the Task Force are; a further study of the relationship between terrorism and domestic and international legal systems, and the need for laws making terrorist acts (including murder) federal crimes. The Task Force report reinforces the notion that the Reagan Administration saw the use of force, especially the military, as the primary response to terrorist incidents. Seeking diplomatic and legal solutions was low on their list of options (Public Report of the Vice President, 1986, p. 719-748).

The most spectacular response to a terrorist incident by the Reagan Administration was Operation Eldorado Canyon, the April 15, 1986 bombing of Libya. The incident that precipitated the US attack was the April 5, 1986 bombing of a nightclub in Germany that was popular with US service personnel. In the aftermath of the nightclub attack, President Reagan signed three executive orders prohibiting US interaction with Libya. These included one prohibiting the import of goods or services, one prohibiting the import of petroleum products, and one blocking Libyan property and interests in the US. Interestingly, these three documents constitute 75% of the executive orders dealing with terrorism signed by President Reagan during his eight years in office (International Terrorism, 2000, p. 427).

## **E. CONDITIONS FOR ASCENDANCE OF THE LAW ENFORCEMENT METHOD**

At the beginning of this chapter it was noted that, in addition to the history of the law enforcement approach to combating terrorism, there was a confluence of events at the end of the 1980s that led to the adoption of the law enforcement approach as the primary method of countering international terrorism directed against the United States. These events were the Iran-Contra scandal, the fall of the Soviet Union, and the bombing of Pan Am flight 103. Each of these events set conditions, which together resulted in the ascendance of the law enforcement method as primary in US policy.

### **1. Iran-Contra**

The Iran Contra scandal, first made public by a November 1986 article in a Lebanese magazine, had profound effects on US counter-terrorism strategy. Most importantly, it showed the world that the US would negotiate with terrorists in direct contradiction with its stated “no concessions” policy. In order to restore international and domestic confidence in its counter-terrorism policy, the Reagan Administration began to emphasize the law enforcement approach. The use of laws and courts was seen as ideal because of the judiciary’s untarnished image and respected position in society. Second, since one of the prime players in the scandal, Oliver North, was the National Security Council’s representative to the Reagan Administration’s Standing Interagency Group (SIG) for Terrorism, suspicion was cast on the whole Interagency Group. When lawyers for the Justice Department began sitting in on SIG meetings and leaks to the press began, some of the operational agencies involved in the SIG, such as the CIA and FBI, began to reduce cooperation for fear of security breaches. This diminished the effectiveness of the SIG and forced the Administration to look for other ways to execute its counter-terrorism strategy.

### **2. Fall of the Soviet Union**

The end of the 1980s saw the dissolution of the USSR and the end of the Cold War. These events caused major shifts in US national security strategy. The effect on US counter-terrorism strategy was also significant. The collapse of the USSR and Russia’s ensuing domestic problems ended what had been major support of terrorist efforts against the United States. Formerly, the USSR had sponsored terrorist groups operating against

the US, such as the Baader-Meinhof gang and Red Army Faction in Germany and the Red Brigades in Italy. Documents of the Soviet's Central Committee, released by President Yeltsin of Russia in 1992, proved the existence of this support (Tucker, 1997, p. 25). The USSR also supported client states that sponsored terrorist groups against the US, such as Libyan and Syrian support of the PLO, the PFLP and the Abu Nidal Organization. With Soviet support gone, the actions of these and other terrorist groups against the US were no longer seen in the light of threats to US national security. This shift in the minds of US policy makers helped to make the law enforcement approach, with its long-term approach and familiarity to the public, more attractive as a means to combat terrorism. It would not be until the rise of the possibility of use of weapons of mass destruction (WMD) that the idea of terrorism as a threat to national security would gain acceptance.

### **3. The Bombing of Pan Am 103**

The bombing of Pan Am flight 103 will be covered in detail as the first case study of this work. However, it bears mentioning here for its role in the ascendance of the law enforcement approach to combating terrorism in the 1990's. After the bombing, when no terrorist group claimed responsibility, the US and Great Britain began an intensive investigation to determine who was responsible. Since the FBI, with its enormous forensic capability, was the logical choice for such an investigation and since the FBI is a law-enforcement agency of the US government, the resulting body of evidence was, not surprisingly, sufficient for a criminal trial. This fact, when combined with other factors that will be covered in detail in the next chapter, resulted in the decision to pursue a criminal trial rather than a diplomatic or military response to the bombing.

### **F. CHANGES IN TERRORISM**

One final dimension relevant to any discussion of the history of US counter-terrorism policy is the changing nature of terrorism itself during this time period. In the book *Inside Terrorism* (1998), Bruce Hoffman, head of the RAND Corporation's terrorism research unit, identifies four areas in which terrorism in the late 1980s and 1990s differed from terrorism previously. He uses as his example the bombing of the two US embassies in Africa in 1998, but the trends he illustrates are relevant to the entire time period studied in this research. First, there has been no effort to limit casualties. Where as

previously, terrorist groups generally followed the creed “terrorists want a lot of people watching and a lot of people listening, not a lot of people dead”, now the emphasis shifted to massive, indiscriminate casualties (Brian Jenkins, as quoted in Hoffman, 1998, p. 198). Second, terrorists expanded their operations to parts of the world not previously used. Whereas previously terrorists had attacked Americans primarily in Europe or the Middle East, the 1990’s saw attacks, by international terrorists, in the United States and Africa. Third, the attacks were undertaken by previously unknown, or unacknowledged groups. The men who bombed the World Trade Center in 1993 were a loosely affiliated group that had never worked together before. Also, al-Qaeda did not have an established record of attacking Americans prior to the 1998 bombing of the embassies in Africa. Finally, there were no immediate claims of responsibility by the terrorists who carried out the attacks. In the 1980s, the trend was very different, with groups rushing to claim responsibility in order to capitalize on the psychological effects of an attack. The bombing of Pan Am flight 103 had no such claim, one of the reasons for the enormous investigation by the US and Great Britain.

These changes in the nature of the attacks resulted in significantly different statistics with respect to terrorism in the 1990s. The most telling statistic is the drop in the actual number of attacks, with a corresponding rise in their lethality. In *Inside Terrorism*, Hoffman notes that in the 1970s, only 17% of international terrorist attacks killed anyone. In the 1980s that number rose slightly to 19%, but in the 1990s it jumped to 29%. This statistic is best explained by the corresponding desire to maximize casualties by the terrorists. Another disturbing trend in terrorism in the 1990s has been an increase in attempts to employ weapons of mass destruction (WMD). The use of Sarin gas by the Aum Shinrikyo religious cult in a Tokyo subway, in 1995, was the first successful use of a nerve agent by a terrorist group. As noted earlier, the collapse of the USSR had significant effects on US counter-terrorism policy; it also made many of the raw materials necessary for WMD more readily available to terrorists. These two developments would again put terrorism in the light of a threat to national security.

## **G. SUMMARY**

By the end of the 1980s, the law enforcement approach to combating terrorism took the form it would hold through the 1990s and into the year 2000. The policy focused

on investigating terrorist attacks against the United States as criminal acts, pursuing the people who committed these acts of terrorism, apprehending them and returning them to the US for a criminal trial. The Iran-Contra scandal, the fall of the Soviet Union and the bombing of Pan Am flight 103 set the stage for the law enforcement approach to become the focus for US counter-terrorist policy during the ensuing decade. Important changes in terrorism itself would influence the effectiveness of this policy, as would the personal influences of policy makers within the US government during the 1990s.

### **III. PAN AM FLIGHT 103**

The first terrorist attack that occurred in the aftermath of Iran-Contra and the end of the Cold War happened as President Ronald Reagan prepared to step down after eight years in office. His successor, George H. W. Bush, was expected by many to perpetuate most of the policies of the Reagan Administration. The attack on a US commercial airplane stunned the world and forced the new President to establish his counter-terrorist policy much quicker than expected. The circumstances of the bombing allowed for an investigative approach not used before and presented the law enforcement agencies of the US government, notably the FBI, with a new opportunity. The bombing of Pan Am flight 103 set many of the policies that would survive into the 1990's with respect to combating terrorism.

#### **A. THE ATTACK**

The bombing of Flight 103 occurred on the evening of December 21, 1988. The bomb, investigators later determined, consisted of a small quantity of Semtex explosive rigged inside a Toshiba radio cassette recorder, packed inside a regular suitcase. The flight, which originated in Frankfurt, Germany, had landed in London's Heathrow Airport and then taken off again at 6:25 PM, bound for New York's JFK Airport. At 7:15 PM, as it climbed to 31,000 feet over the Scottish countryside, the bomb detonated. The explosion occurred in the forward baggage compartment, just forward of the wings. It tore through the fuselage and probably weakened the structure sufficiently to allow the cockpit and first class portion of the plane to tear away. The explosion also occurred next to the main electronic panels, which means that Pan Am 103 lost all communications and flight controls immediately. The plane, no doubt, disintegrated further as the forces of forward momentum and depressurization took effect, with pieces impacting in and around the town of Lockerbie. All 259 people aboard the flight were killed along with eleven residents of Lockerbie on the ground; 189 of these people were Americans. Because the explosion occurred at such a high altitude, the debris was scattered over an 845 square-mile area.

## **B. THE IMMEDIATE RESPONSE**

### **1. The FBI**

The first US investigator to respond to the news of the downed airplane was FBI Special Agent Tim Dorch. He worked in the Legal Attaché's (LEGAT) office of the US Embassy in London. Ambassador Charles Prince and Tim Dorch, along with embassy security personnel, were in Lockerbie "within hours of the crash" (Emerson & Duffy, 1990, p. 26). The news also reached FBI headquarters soon after the crash and agents were put on alert for deployment to Lockerbie. During the night of December 21 almost 500 police and military personnel, mostly from areas around Dumfries District, arrived at the town. They came to look for survivors, fight fires, provide medical assistance and begin the grim work of figuring out what happened to cause the large jet to crash into this small Scottish town. The man in charge of the whole operation was John Boyd. At the time of the crash he was the chief constable for the Dumfries District. Boyd ordered the police agencies arriving on the scene to set up shop in the Lockerbie Academy. Tim Dorch took over one of the Academy's chemistry labs for the FBI and immediately established secure communications with the LEGAT office in London and FBI Headquarters in Washington DC. The Embassy officials accompanying Ambassador Prince set up in another classroom nearby.

The first meeting of all the investigators took place the following morning. John Boyd introduced all of the agencies represented there. The FBI took its place in the meeting and would be part of this investigation until the very end. That same day the first group of FBI agents from the US arrived. Among them were members of the Ident Team, a select group of agents who specialize in fingerprinting corpses and live people. They would help to identify the bodies of the victims so that the remains could be returned to waiting families. Soon after this first group, more agents, this time from the Criminal Investigation Division, as well as explosives experts from the FBI, arrived to assist the investigators already on the ground. In all, by the morning of December 22, 1100 police officers and 600 soldiers were in and around Lockerbie to help with the search for bodies and clues as to why this plane crashed (Emerson & Duffy, 1990, p. 42).

By December 25 the searchers had conclusive proof that a bomb was responsible for the crash. The FBI did not want to release that information, fearing that it would alert those responsible and allow them a head start from the law (Emerson & Duffy, 1990, p. 98). The information got to the press anyway and by the next morning was public knowledge. FBI Executive Assistant Director for Investigations, Buck Revell, decided that there were approximately 1200 suspects that would have to be questioned, including the families of all the passengers, the ground crews at all the airports involved in Flight 103's route, and all of the security personnel at those same airports. He therefore concluded that the investigation would require agents from all of the FBI's fifty-nine field offices. In their book about the crash, Emerson and Duffy note that Buck Revell felt "the right tone be set from the onset" for this investigation, adding that the FBI just assumed that it would be the lead US agency for the investigation (1990, p. 70). The day after Christmas the National Security Agency began reviewing its intercepts to try and find some pattern or clue as to the identity or methods of the attackers.

On December 28 the FBI's Director, William Sessions, held a news conference. He noted publicly that the FBI was authorized to participate in the investigation under Title 18, US Code 32, which involves the "interference with or destruction of United States aircraft traveling in foreign or interstate commerce" (Emerson & Duffy, 1990, p. 143). Sessions also added that the FBI had no reason to suspect terrorism stating, "we have no suspicions that [the incident was] criminal or that it [was] terroristic" (Emerson & Duffy, 1990, p. 143). This statement contrasts directly with Emerson's assertion that knowledge of a bomb (which implies a criminal act) existed three days prior to this news conference.

During what normally would have been a quiet time for the holidays, Director Sessions created an FBI task force for the Pan Am 103 bombing and named it "Scotbom". More importantly, two additional groups of FBI agents were assigned to the task force. The first, a small group of agents known as C-3, had a normal compliment of seven agents who were experts at conducting overseas arrests and apprehensions of suspected criminals. Their past accomplishments included a joint operation with the DEA and CIA, leading to the arrest of Fawaz Younis, a known hijacker, on a yacht off of Cyprus, and the arrest of Mohammed Ali Hamadei. Hamadei, one of the men who

hijacked TWA flight 847 in 1985 and held the plane in Beruit, was believed to be responsible for the murder of US Navy diver Robert Stethem during that hijacking. The second group of agents assigned to “Scotbom” was from the FBI’s International Response Team. These agents are fluent in foreign languages and useful to any investigations conducted in foreign countries (Emerson & Duffy, 1990, p. 149). The commitment of these two groups clearly indicates that the FBI planned to conduct extensive investigations overseas as part of the Scotbom investigation.

## **2. Other Governmental Agencies**

The FBI was not the only federal agency to get involved in the bombing. Within weeks of the crash both the CIA and the DIA were working to provide clues as to who was responsible. In their book on Pan Am flight 103, Emerson and Duffy recount how the CIA was very quick to send people to the crash site. They claim, however, that the reason for the CIA’s speedy dispatch, “within hours of the crash”, was to recover sensitive documents that the CIA believed to be on the plane (1990, p. 41). The CIA also fanned out across the globe and contacted sources in thirty countries, both in and out of government, to try and obtain leads. The DIA focused on Middle Eastern terrorist groups, as evidenced by the detention of two US Army officers by the Syrian government after they took photos of a training camp for the Popular Front for the Liberation of Palestine-General Command (PFLP-GC) in Syria, on March 3, 1989. Although both men, COL Clifford Ward and MAJ Robert Siegel, were defense attaches with the US Embassy, the photos upset the Syrian government because they believed that Israeli intelligence would use the photos to plan an attack on the camp.

In May 1989, senior officials from the investigative agencies involved held their third meeting in Washington DC to discuss the progress of the investigation. Lawyers from the Department of Justice were tasked to determine if there was sufficient evidence to take the matter to a grand jury. Upon review of the evidence the Justice Department determined that the Scottish rules of evidence were strict enough to pass US standards; in fact, they were “considerably stiffer than America’s” (Emerson & Duffy, 1990, p. 213).

### **3. Theories of Responsibility**

At the time of this meeting, five months into the investigation, agents had followed leads in such diverse countries as Germany, England, Sweden, Switzerland, Czechoslovakia, Malta, and Senegal, using two theories about how the bomb got onto the plane and where the bomb came from. The evidence seemed to point to Frankfurt Germany as the place where the bomb was loaded onto the flight, and there were two probable explanations for who was responsible.

The first was a PFLP-GC bomb maker named Marwan Kreeshat, who was known in the Middle East as a highly proficient bomb maker. He was arrested along with 16 other suspected terrorists and then mysteriously released by German authorities in late October 1988. He immediately disappeared. In the apartment where he was apprehended, police found a Toshiba radio that expertly concealed a cleverly built bomb. He was believed to be working at the behest of the Iranian government, which wanted revenge for the destruction of an Iranian passenger plane by the USS Vincennes in 1988.

The second theory pointed to Libyan intelligence operatives working at the direction of Muammar Qadhafi. These agents, working undercover as employees of Libyan Arab Airlines (LAA), sent the suitcase containing the bomb as unaccompanied baggage on Air Malta Flight 180 to Frankfurt, using stolen luggage tags. In Frankfurt, the suitcase was transferred to Pan Am flight 103, bound for London and New York. Qadhafi wanted to destroy an American plane in retaliation for the 1986 bombing of Tripoli by the US. Although the lawyers at the May 1989 meeting were pleased with the standards of evidence being used by the Scottish investigators, they decided that neither theory was strong enough to stand up in court and so the investigation continued.

### **C. THE LONG TERM RESPONSE**

After the initial investigation established that a bomb, placed on the flight in Frankfurt, was responsible for the loss of Pan Am 103, the next focus for investigators was to determine which theory had the most convincing legal evidence, gather that evidence, and build a solid case to bring to trial. Ultimately, investigators found that they had the most compelling evidence for the Libyan connection, however the coincidences with the Iranians and the PFLP-GC were hard to ignore.

## **1. The PFLP-GC and the Iranians**

What American and Scottish authorities did not know as they met in May 1989 was that the Germans had more evidence than they were sharing about the potential origin of the bomb that brought down Flight 103. Since the beginning of the investigation, US and Scottish investigators had been frustrated by the lack of cooperation they had received from the German government (Emerson & Duffy, 1990, p.137). The Germans seemed to resent the implication that the bomb had been placed on Pan Am 103 at its origin in Frankfurt Germany.

The Germans called the operation that had netted Marwan Kreeshat in October 1988 “Autumn Leaves.” After careful surveillance, the German internal security service, the Bundeskriminalamt (BKA), arrested 17 suspected members of the PFLP-GC. All but a handful were immediately released due to insufficient evidence. The Toshiba radio the BKA took as evidence during the raid was not discovered to be a bomb until three days later. By all accounts, after some impressive surveillance work, the arrest phase of the operation was poorly executed. Buck Revell learned of the operation during his initial visit to Germany after the bombing (Emerson & Duffy, 1990, p. 168). Thereafter, requests for more information concerning that operation by Scotbom investigators were met with little cooperation. In April 1989, by an amazing piece of luck, BKA investigators located three more of the five bombs Marwan Kreeshat boasted to have built in the same apartment where they arrested him five months earlier. Both the FBI and Scottish investigators theorized that the fifth bomb, which was never located, might have been placed aboard Pan Am flight 103. The question remaining was, who put that bomb on the flight?

The potential answer to that question came in August 1989 when investigators in Lockerbie found scraps of clothing, apparently from Malta, that had been in the suitcase with the bomb. After careful inquiries by investigators it was determined that Abu Talb, an Egyptian terrorist living in Sweden, had purchased the clothes in Malta, during a trip in October 1988. Abu Talb had a definite connection to the PFLP-GC people arrested as part of Autumn Leaves. He had also circled the date of the bombing, December 21, on a calendar found in his house. So it appeared that the bomber had been located.

Unfortunately for the Scotbom investigators, Abu Talb was already being tried by Swedish authorities for two bombings in Copenhagen and Stockholm and was not available for extradition.

## **2. The Libyan Connection**

The theory about Libyan involvement bore many coincidences to the PFLP-GC theory. The following account was obtained from the testimony of G. Henry Schuler before a sub-committee of the House Foreign Affairs Committee in July 1994 (US Policy, 1994, p. 79-80).

In February 1988 authorities in Senegal detained two Libyan men. A search of their possessions revealed electronic equipment, including timers, which later proved to match exactly pieces found at the crash site in Lockerbie. The critical piece, found at the crash site, was a small circuit board from a timer which was subsequently traced to a Swiss electronic manufacturer, Meister et Bollier. When US investigators asked the Swiss firm about the timers, it confirmed that twenty of the prototype electronic times had been constructed for a Libyan man who picked them up in 1985. The Libyan's name was Said Rashid and his assistant at his Zurich office was Abdel Basset Ali Al-Megrahi, one of the men later indicted by the US Attorney.

Investigators also learned that Al-Megrahi spent the night of December 7, 1988 at a hotel in Malta, where he registered as a dispatcher for LAA. Inquiries at the clothing store, Mary's House, revealed that Al-Megrahi bought a batch of miscellaneous clothing there that day and left town the next. This is the same store where Abu Talb is also thought to have purchased clothes. Investigators in Malta also learned that Al-Megrahi and Lamen Khalifa Fhimah, a former manager for LAA's Malta office, arrived there from Tripoli on December 20, 1988 with brown, Samsonite suitcases resembling the one found in the Pan Am debris.

One of the unanswered questions from the investigation into how the suitcase got onto flight 103 in Frankfurt was a piece of unaccompanied baggage that transferred from Air Malta flight 180 to Pan Am 103. A check of the records from Luqa Airport in Malta revealed that the bags from Air Malta 180 were handled at the same counter as a Libyan Arab Airlines flight, 147. The manager of the Malta office for LAA provided the final

piece of the puzzle. Abdel Majid Giaka confirmed that Al-Megrahi boarded LAA flight 147, bound for Tripoli, the morning of 21 December. He also confirmed that Fhimah, using his knowledge of the LAA operation in Malta, obtained Air Malta luggage tags, apparently to put on the luggage that Al-Megrahi checked at the counter. With Air Malta tags, the bag Al-Megrahi check could have easily been headed to Frankfurt and Pan Am flight 103. A final loose end, the acquisition of Semtex explosives for the bomb, was tied up when the Czech government confirmed that Libya purchased large quantities of the explosive during the communist era. This also helped to confirm greater Libyan government involvement in the plot.

### **3. The Indictments**

By November 1990, investigators had interviewed over 14,000 people in 50 countries (Mickolus, 1993, p. 281). They had also reconstructed 85% of the plane in their effort to gain clues as to the identity of the terrorists. At least five theories as to how the bomb got on the plane had been extensively investigated. On November 21, 1990 the Washington Post ran an article alleging that the bomb was constructed by the PFLP-GC and paid for by Iran to be used in retaliation for the destruction of an Iranian Airbus by the USS Vincennes. The article claimed that the PFLP-GC refused to continue after the Autumn Leaves arrests and that Libyan agents carried out the attack instead (Mickolus, 1993, p. 281). This hybrid theory is the first time that a public mention of Libyan involvement in the bombing was made. On June 26, 1991 French officials investigating the 1989 bombing of a UTA flight announced that they had evidence that Libyan intelligence operatives were involved in both the UTA and Pan Am bombings. Finally, in Washington DC, a Federal grand jury announced on November 14, 1991 that it had indicted “two Libyan intelligence officers” on 193 felony counts. These included 189 counts of murder, “one count of conspiracy, one count of putting a destructive device on a US civil aircraft resulting in death, one count of destroying a US civil aircraft with an explosive device, and one count of destroying a vehicle in foreign commerce” (Mickolus, 1993, p. 282).

### **4. Libya’s Response**

Not surprisingly, Libya denied the allegations. Despite pressure from both the United States and United Kingdom, Libyan leader Muammar Qadhafi refused to hand

over Abdel Basset Ali Al-Megrahi and Lamen Khalifa Fhimah because Libya did not have an extradition treaty with either country. Both the US and UK would not accept that the two men had acted alone. Marlin Fitzwater, President Bush's press secretary at the time, claimed that, "it's impossible for us to believe that the government [of Libya] was not involved and that this is not a case of state-sponsored terrorism" (Mickolus, 1993, p. 283). Qadhafi handed the matter to his own justice department to evaluate on November 23, 1991 and four days later the US and UK again called for the two suspects to be released and for the government of Libya to "accept official responsibility for their actions, pay compensation and furnish witnesses and evidence for prosecuting the case" (Mickolus, 1993, p. 284).

The US then turned to the United Nations for help in obtaining the two men. On January 21, 1992 the UN adopted Resolution 731. In the Resolution, the Security Counsel noted that it was "deeply concerned over the results of investigations, which implicate officials of the Libyan Government". The resolution went on to "condemn the destruction of Pan Am flight 103...and the resultant loss of hundreds of lives" and "urge the Libyan Government immediately to provide a full and effective response", but did not impose any punishment for failing to provide the support. Qadhafi ignored the Resolution, so the UK and US pushed for more substantial measures, which they got just two months later. On March 31, 1992 the UN Security Counsel adopted Resolution 748. This resolution imposed sanctions on Libya that were to remain in effect until that country handed over the suspects and committed "itself definitively to cease all forms of terrorist action and all assistance to terrorist groups" (UN Resolution 748, para 2). The resolution gave Libya only two weeks to comply or have the sanctions imposed. Qadhafi ignored the demand.

Meanwhile, Libya took the matter to the International Court of Justice where it argued that the Montreal Convention of 1971 covered the matter and dictated that by detaining the suspects itself, Libya was complying with that document. The UK and US took issue with that line of reasoning and argued that the Resolutions took precedence over the Montreal Convention. In October 1992, the Court ruled in favor of the UK and US

In the US, the memory of the bombing was fading behind more recent events such as the victory in Operation Desert Storm, the election of President Bill Clinton and the bombing of the World Trade Center in February 1993. Finally, late in 1993, the new administration revisited the Libyan problem. It pushed the UN to renew its efforts to force Libyan leader Qadhafi to turn over the suspects. On November 11, 1993, 20 months after Resolution 748 was passed and sanctions were imposed, the UN once again adopted a resolution condemning the attack and increasing sanctions on Libya until such time as it complied with Resolutions 731 and 748. Resolution 883 went further in its sanctions, but interestingly enough, specified that the measures “not apply to funds or other financial resources derived from the sale or supply of any petroleum or petroleum products” (UN Resolution 883, para 4). Since most of Libya’s revenue derives from oil production, this specific omission significantly reduces the impact of the resolution.

The families of the people killed in the crash of Pan Am flight 103 had reason to celebrate in early 1994 when a professor from Edinburgh University, Professor Robert Black, and Dr. Ibrahim Legwell, leader of the Libyan defense team apparently came to an agreement on the trial. They agreed that the men could be tried in a neutral place by a group of international judges. The governments of the United States and the United Kingdom immediately rejected the proposal and demanded that the trial be held in either of their countries (Lockerbie Trial Briefing Site, 2001).

After this impasse, the matter languished in the International Court of Justice until the beginning of 1998. By this time there were not many people who still believed that the sanctions would succeed in getting Qadhafi to turn over al-Megrahi and Fhimah. In November 1997, Libya conceded that it would not object to the trial being held in Scotland or by Scottish judges. A month later the UN released a report, by its own legal experts, which stated that, while a fair trial might be possible using judges, a fair trial by jury was not likely. Finally, in April 1998 the obstructions that kept the trial on hold for so long seemed to begin breaking apart. With voices in the UN beginning to call for lifting of sanctions against Libya, Professor Black was able to convince Muammar Qadhafi to support a trial of the two men in a neutral country by Scottish judges using Scottish law, but he added that the accused must surrender themselves for the trial (Lockerbie Trial Briefing Site, 2001). On 21 July the governments of the UK and US

stipulated that the arrangements made by Professor Black were acceptable. The trial could now proceed.

The location selected for the trial was Camp Zeist, a former US airbase outside Utrecht, in the Netherlands. After many improvements to the base to ensure the security of both the judges and the accused, the camp was ready to receive its new occupants. On April 5, 1999 the two men, Abdel Basset Ali Al-Megrahi and Lamen Khalifa Fhimah surrendered to authorities at the Dutch airbase in Valkenburg. The trial started on May 3, 2000 and the three Scottish judges handed down their verdict on January 31, 2001.

The verdict was a mixed victory for the prosecution and all the investigators who had invested so many years of hard work. The court found Al-Megrahi guilty of all charges and further concluded that he acted “in furtherance of the purposes of...Libyan Intelligence Services” (Patterns of Global Terrorism, 2000, p. 34). The judges decided that they had insufficient evidence to find Fhimah guilty beyond a reasonable doubt and did not convict him of anything. In Patterns of Global Terrorism 2000, the US State Department declared “the verdict of the court represents a victory for the international effort to hold terrorists accountable for their crimes” (p. 2).

#### **D. LAWS, TREATIES AND CONVENTIONS**

On August 14, 1989, Press Secretary Marlin Fitzwater issued a statement informing the American public that President Bush was forming a Commission on Aviation Security and Terrorism to “review and evaluate policy options in connection with aviation security” (The Cumulated Indexes to the Public Papers of Presidents, 1989, p. 1060). Furthermore, the commission would “make recommendations regarding policies and laws concerning the families of victims of terrorist acts” (The Cumulated Indexes to the Public Papers of Presidents, 1989, p. 1060). The work of this commission lead to the creation of the Aviation Security Improvement Act, which President Bush signed in November 1990. This new law addressed terrorism from the standpoint of increased security at airports and on aircraft.

On the international front, work began in the United Nations, shortly after the bombing, to write an international agreement that would make it easier to identify the origin and types of plastic explosives that might be used by terrorists. The UN ratified the

“Convention on the Marking of Plastic Explosives for the Purpose of Identification” in March 1991. As a result of the Pan Am flight 103 bombing, language in the convention specified that commercial plastic explosives must contain a chemical marker that would identify its origin and manufacturer. The Convention also specified tighter control over and limited production of unmarked or undetectable plastic explosives by the countries that produced them. The Convention includes a technical annex, which specifies the types of explosives regulated in the document (Fact Sheet: International Terrorism Conventions, 1998).

#### **E. SUMMARY**

This first terrorist attack on America after the end of the Cold War set many of the precedents that would form the “law enforcement frame” for combating terrorism in the 1990’s. The fact that the bombing occurred over land, in a country with close ties to the US, allowed for a detailed forensic investigation. The attitude and hard work of the FBI and the close cooperation with Scottish investigators allowed both countries to build a strong legal case. Finally, the sanctions imposed by the UN supplied pressure to Libya to turn over the suspects, which supported the desire of the US to use the courts to settle the issue. Each of these small facts formed a growing base of support for using laws and courts to fight terrorism. As the US responded to subsequent attacks, the manner in which the Pan Am case developed influenced the responses to these later attacks.

## **IV. WORLD TRADE CENTER, 1993**

The bombing of the World Trade Center was the second attack to occur after the establishment of the law enforcement approach. The way in which the US responded to this attack reinforced, in the minds of many US policy makers, many of the positive aspects of that approach. Because it happened inside US borders, the attack on the World Trade Center (WTC) was more manageable than Pan Am flight 103 for the FBI's terrorism investigators. The search for the perpetrators provided exciting headlines for the nation and uncovered more deadly attacks planned against the United States. The investigation into the bombing of the WTC also convinced the new Clinton Administration that the law enforcement approach was the most effective way to handle those who attacked the United States.

### **A. THE ATTACK**

The bombing of the WTC took place on February 26, 1993 at a few minutes after noon. The bomb was a complex device of 1200 pounds of gunpowder, sulphuric acid, urea pellets and nitroglycerine placed in the back of a yellow Ryder truck, along with several tanks of hydrogen. The truck was parked in the B-2 level of the parking garage under the WTC where it exploded during the lunch hour of most of the people working above. The blast tore through five levels of the parking garage and blew a hole 180 feet long in the wall between Level B-2 and the subway station under the WTC. The force of the explosion hurled a seven-ton steel beam 75 feet from where it braced part of the parking structure. Immediately the whole WTC complex lost power and the lights went out 110 stories above the explosion. The shock wave quickly spread and was felt as far away as Ellis Island. Within the WTC complex people were trying to get out as fast as possible. Many people were trampled and hurt by the press of the crowd. In the high towers above people moved quickly to the fire escapes and hurried to descend the many flights of stairs and get away from the building, not knowing the extent of the damage.

Despite the size and placement of the bomb, it did not accomplish what its creator had intended. Ramzi Yousef later admitted that he planned to topple one of the two giant towers into the other, collapsing both and killing tens of thousands of people. Instead, a

large hole was blown in the underground levels of the WTC but only six people were killed and just over a thousand injured.

## B. THE IMMEDIATE RESPONSE

As one would expect from such an attack inside a major US city, the first people to respond were the emergency services of New York City. The Fire Department responded with 750 vehicles and would keep a presence at the scene for a month after the attack. Rescue workers immediately set about the difficult task of pulling wounded and dead from the rubble. The next morning, as the rescue workers went about their grim business at the WTC complex, members of the many Federal agencies tasked to respond to such a crisis were meeting at the Federal building at 26 Federal Plaza. Their job was to figure out what had happened and who was responsible. At the time of the meeting, the New York Police Department (NYPD) still had jurisdiction. All of those present at the meeting, however, knew that as soon as it was established that a bomb was responsible for the explosion, the case would be handed over to the FBI. In his book, *The New Jackals*, Simon Reeve quotes New York Governor Mario Cuomo the day after the attack. “It looks like a bomb. It smells like a bomb.... There is an immense crater. It’s difficult to imagine what did that, if not a bomb” (1999, p. 27). Two days after the attack, the FBI announced that it had established, through chemical analysis, that a bomb was responsible for the blast and that it would be taking over the investigation.

The FBI, apparently with a nod to the continuing investigation of Pan Am 103, named the investigation “Tradebom”. The man who would head the Tradebom investigation for the FBI was Neil Herman. He was the Supervisory Special Agent in charge of the JTTF, or Joint Terrorist Task Force. The JTTF is an interagency investigative group that was originally formed in the early 1980’s to combat a rash of bombings by Puerto Rican independence movements in New York City. At the time of the bombing of the WTC, the JTTF consisted of between 40 and 50 agents from “FBI, NYPD, the State Department, the Secret Service, the Immigration and Naturalization Service, the Federal Aviation Administration, the US Marshals Service, the ATF, the New York State Police and the Port Authority” (Reeve, 1999, p. 16). Herman immediately organized them into shifts to allow for around-the-clock work. The men of

the JTTF knew that the sooner clues were found, the better their chances of finding those responsible.

Apparently, luck was on the side of the FBI. Just days after the bombing, two explosives experts from the JTTF, Donald Sadowy and Joseph Hanlin, descended into the crater under the WTC. Almost immediately they located three pieces of what appeared to be the rear axle of a van. Because of the way that the metal was twisted and torn, the two men quickly realized that these pieces must have come from the van that carried the bomb. More importantly, a Vehicle Identification Number (VIN) was still visible on the metal. By tracing this VIN, investigators were able to link the van to a rental company in Jersey City.

On March 4, 1993, just a week after the bomb exploded, FBI agents arrested Mohammed Salameh after he returned to the rental agency to try and reclaim the deposit on the van used in the bombing. Amazingly, after going to great lengths to report the van stolen prior to the bombing, Salameh returned for the deposit so he would have enough money for a plane ticket to escape from the US. After the capture of Salameh, the FBI made significant progress in their investigation. The same day they arrested Salameh, the FBI searched his apartment. They also obtained his telephone records and began to trace every phone number that had been called from that apartment. The clues from the apartment also led them to a storage unit containing a deadly collection of chemicals, all of which could have been used to make a bomb of the type used at the WTC. Furthermore, the FBI lifted fingerprints of Salameh, and others, from the storage unit and were then able to indict him for the bombing. Later investigation revealed that Salameh had entered the US in February 1988 and had remained illegally after his six-month tourist visa expired.

The leads grew quickly, and so did the arrests. Mahmud Abdoulalima, one of the men who helped to build and deliver the bomb, initially flew to back to the Middle East and eventually on to Egypt. Once the FBI figured out where he was, the Egyptian authorities arrested him and deported him to the US. By the time Abdoulalima was back in the US, the FBI had also arrested Nidal Ayyad, who acquired the ingredients for the bomb, and Ahmed Ajaj, who helped the others with advice on how to make the bomb

(Reeve, 1999, p. 40). From their questioning of the suspects the FBI realized that they had yet to capture the ringleader of the group. Clearly, none of the men in custody so far was the leader of these terrorists. Investigators did have a name, Ramzi Yousef. On March 31, 1993, two weeks after the indictments of Salameh and Ayyad, federal prosecutor in New York indicted Yousef for the WTC attack and then set out to find him.

Meanwhile, the trial of Salameh, Ayyad and Ajaj began in September 1993. They were convicted on charges of conspiracy, possession of explosives, and assault on March 4, 1994 and each received a prison sentence of 240 years. Also, Mahmud Abdoulalima was convicted as an accessory and sentenced to eight years in prison. The FBI succeeded in quickly capturing many of the people involved in the attack on the WTC. The FBI's search for the man responsible for planning and leading the attack would take much longer and not end before Yousef had a chance to carry out more terrorist attacks in other parts of the world.

### **C. THE LONG TERM RESPONSE**

#### **1. Ramzi Yousef**

Immediately after the bombs went off, Ramzi Yousef got on a plane at JFK airport and flew to Karachi, Pakistan. From there, he caught another flight to Quetta, in Baluchistan, as far from western influence as he could get. Unlike his accomplices in this attack, Yousef had prepared a quick escape from the hornet's nest he had just kicked over in New York. By getting as far away as possible, and into a part of the world where US investigators would have difficulty finding and tracking him, Yousef greatly increased his chances of eluding capture.

Meanwhile, back in New York, the FBI, hoping that Yousef might still be in the country, offered a two million dollar reward for information leading to his arrest. They advertised this reward by taking out an ad in the New York Times (Mickolus, 1997, p. 313). At the JTTF, Neil Herman assigned six agents to Yousef, the most of any suspect. After weeks of investigation the investigators realized that their quarry had fled to Pakistan. By establishing a working relationship with their counterparts in Pakistan, the investigators from the JTTF were able to continue the search.

Investigators now believe that Yousef did not merely hide from them. Instead, he linked up with other young radicals and continued to plan and execute terrorist attacks all over Asia. These may have included two separate attempts to assassinate Pakistani Prime Minister Benazir Bhutto in Pakistan (both of which failed), an attack on the Israeli Embassy in Bangkok, Thailand with a truck bomb (which failed when the driver got cold feet and abandoned the truck), and the June 20, 1994 bombing of a Shiite mosque in Mashhad, Iran which killed at least 26 pilgrims and wounded over two hundred others (Reeve, 1999, p. 66).

While all this was going on, the members of the JTTF assigned to find Yousef were succeeding only in uncovering a cold trail. Despite help from the Pakistani authorities, who seemed genuinely interested in helping the Americans, Yousef eventually slipped out of Pakistan and into the Philippines to plan his most audacious attack ever. In his book, *The New Jackals*, Simon Reeve hypothesizes that Yousef went to the Philippines at the behest of Osama bin Laden to help train the Abu Sayyaf terrorist group on Basilan Island (1999, p. 72). Abu Sayyaf is a Muslim terrorist group led by a former Filipino Afghan freedom fighter. Once in the Philippines, Yousef began planning another bloody phase of his career. Captured documents reveal that Yousef and others alternately planned to kill American President Bill Clinton and the Pope, while working to perfect a bomb small enough to sneak onto an airplane, yet destructive enough to destroy the plane.

Yousef tested a device on December 11, 1994 by planting it under the seat of a Philippine Airlines flight. He got off the plane in Cebu and the bomb exploded as the plane continued on to Tokyo, Japan. Although too small to destroy the plane, the bomb did kill the passenger in the seat and tore a hole in the floor big enough to destroy control rods and force the pilot to make an emergency landing in Okinawa. Yousef was now dangerously close to acquiring the capability to covertly destroy an airliner in flight. The next plan he concocted would exceed anything previously attempted by terrorists. Yousef wanted to blow up eleven US airliners nearly simultaneously. He would accomplish this with four other men riding eleven different flights and planting bombs that would detonate after the five men had deplaned and disappeared.

Fortunately, Yousef failed in this plan because some of the chemicals he was mixing for the bombs ignited in his small Manila apartment causing a fire. Yousef escaped but an accomplice of his, Abdul Hakim Murad, was arrested when Yousef sent him back to the apartment to recover a laptop computer that contained incriminating files. The computer was quickly turned over to the FBI who discovered the information about the now-foiled plot to bomb the airliners, as well as information about the plans to kill President Clinton and the Pope. One other piece of information obtained from the computer would prove eerily prophetic. Yousef planned to have Murad fly a plane loaded with chemicals into CIA Headquarters in Langley, Virginia to “demonstrate to the whole world that a Muslim martyr is ready and determined to die for the glorification of Islam” (Reeve, 1999, p. 87). Again, this plot would be interrupted by the fortunate arrest of Murad and the capture of the computer, which would force Yousef back into hiding.

Yousef flew back to Pakistan and contacted an acquaintance named Ishtiaque Parker. Yousef pressured Parker to participate in terrorist attacks, specifically bombing a US airliner or kidnapping a Filipino diplomat. Apparently, Yousef wanted to immediately execute another bombing to throw investigators off his trail, or capture a diplomat to negotiate for Murad’s release. Parker grew frightened and realized that Yousef planned to sacrifice him in a quest for revenge. On February 3, 1995 Parker called the US Embassy in Islamabad and told them that he had information on the whereabouts of Yousef (Reeve, 1999, p. 101).

Officials in the US Embassy reacted very quickly to fresh information about the most wanted terrorist in the world. Unwilling to wait for the FBI’s Hostage Rescue Team to arrive, FBI and ATF agents on the scene rapidly obtained permission from the Pakistani government to apprehend Yousef and extradite him to the United States. On February 7, the same FBI agents, along with Pakistani Special Forces, then raided Yousef’s apartment in Islamabad, captured him and moved him to the airport to meet a plane sent from the US specifically to bring Ramzi Yousef back for trial. It is interesting to note the lengths to which the FBI went to ensure Yousef’s uninterrupted return for trial. The plane flew nonstop from Islamabad, Pakistan to Newburg, New York, refueling in-flight and taking a circuitous route to avoid flying over certain nations. Neil Herman

noted “Yousef had to be brought back to the jurisdiction of the US Attorney’s office in New York without landing anywhere” (Reeve, 1999, p. 109).

In the month after Ramzi Yousef’s arrest, authorities in Pakistan, the Philippines and Jordan began making arrests of their own. Pakistani investigators arrested a total of 15 suspects as accomplices in the attacks Yousef planned or carried out in the months following the WTC attack. Filipino authorities arrested seven alleged associates of Yousef’s for the plot to kill the Pope and the bombing of the Philippine Airlines flight in December 1994 (Mickolus, 1997, p. 319-320). Finally, in August of 1995, Eyad Mahmoud Ismail Najim was arrested in Jordan, turned over to US officials and returned to the US. However, in Pakistan, the authorities were not the only people busy after Yousef’s arrest. One month later, two Americans working at the US Consulate in Karachi, Pakistan were killed and a third was injured by gunfire while they were stopped at a traffic light (Reeve, 1999, p. 236). Apparently, this attack on Americans in Pakistan was in retaliation for Yousef’s capture

US prosecutors now had two separate indictments for Yousef. The first was for the bombing of the WTC and the second was for the bombing of the airliner in the Philippines. Yousef would wait over a year for the trials to begin while prosecutors made sure that every detail was ready for the courtroom. The first trial began on May 29, 1996. This trial would determine Yousef’s guilt in the Philippine Airline bombing. Yousef defended himself, while the Federal Prosecutor submitted over 1000 exhibits and took fourteen weeks to prove that Yousef not only bombed the Philippine Airlines flight, but also conspired to bomb the eleven American flights later that year. Yousef was found guilty on all counts.

The second trial, for the WTC bombing, began shortly thereafter and this time Yousef allowed lawyers to represent him. This trial also included Eyad Mahmoud Ismail Najim, the man Jordanian officials had arrested and turned over to the US. Prosecutors again took months to make their case and, again, Yousef was found guilty on all counts. Najim was also found guilty. The Judge, Kevin Duffy, was the same man who had tried the other conspirators in the WTC bombing. He could not sentence Yousef to death because there was no Federal death penalty in terrorist cases until 1994, after the

bombing took place. Instead, Duffy gave Yousef and Najim the same sentence he handed out to the other conspirators, 240 years in prison. Yousef will spend the rest of his life in a maximum-security prison in Colorado.

Ramzi Yousef eluded capture for almost two years. In that time he apparently plotted or executed roughly a dozen other terrorist attacks around the world. The US Government spent millions of dollars and thousands of man-hours to catch and try this leader of the men involved in the WTC attack. Prosecutors spent another year preparing for Yousef's trials. By the time he was in custody, the prosecutors had to prepare two trials because Yousef managed to plan and attempt additional attacks against the US in the meantime.

## **2. Sheikh Omar Abdul Rahman**

During the investigation and arrests of the men involved with the WTC attack, one common trait of all the suspects was their membership in a small New Jersey mosque led by Sheikh Omar Abdul Rahman. Rahman is an interesting figure who evidently entered the US first in 1986 from Egypt and again in 1990 from Sudan. He is blind and has a large following of supporters in Europe, America and Egypt. In the 1980's, after the assassination of Anwar Sadat, Rahman issued a fatwa condoning the killing and was placed under house arrest in Egypt for complicity in that murder. He was later acquitted of the charges and left Cairo in 1990 for Sudan (Mickolus, 1997, p. 313). Egypt considered him an enemy of the state and wanted him returned to stand trial for the 1989 murder of a police officer and for plotting to overthrow the Egyptian government (Reeve, 1999, p.60).

Later in 1990, despite being listed on the Automated Visa Lookout System as a suspected terrorist, he obtained a visa to come to the US. In *The New Jackals*, Simon Reeve alleges that Rahman acquired the visa through the CIA, so that they might cultivate him as a source. There is no other data to support this statement. The Immigration and Naturalization Service (INS), apparently unaware of any deal with the CIA, moved to deport Rahman in 1991, probably in support of Egypt's request for return. The case was referred to Immigration Court for review.

Meanwhile, Rahman used his pulpit at the mosque to extort his followers to “hit hard and kill the enemies of God” (Reeve, 1999, p. 60). Evidently Salameh, Abdouhalima, Ayyad and Ajaj decided to help Yousef do just that. Soon after the WTC attack, on March 17, 1993, Immigration Judge Daniel Meisner ruled that Sheikh Rahman could be deported. Rahman appealed the decision and delayed his departure.

In April 1993, an FBI informant in Rahman’s mosque reported that other members of Rahman’s group were plotting a series of follow-on bombings. The informant, Emad Salem, reported that the targets would be the Lincoln and Holland Tunnels, the Statue of Liberty, the George Washington Bridge and the UN Building. Salem led FBI Agents to a warehouse in New York where the bombs were being constructed. On June 23, 1993, after a month of recording the men in the warehouse going about their deadly work, the FBI arrested twelve men in connection with the plot. A week later, on July 2, 1993 agents arrested Sheikh Omar Abdul Rahman and indicted him under a Federal Sedition Law for encouraging the bombings (Mickolus, 1997, p. 313). On August 16 US District Court Judge Charles Brieant dismissed Rahman’s appeal of the deportation order and supported an earlier appeal of Rahman’s for political asylum. In the ruling, Brieant referred to Rahman as a “danger to the security of the US” (Mickolus, 1997, p. 313). Finally, on October 15, 1993, Sheikh Rahman appeared in court to face charges for his part in the plot to bomb New York landmarks.

The story of Sheikh Omar Abdul Rahman and his peripheral involvement in the WTC attack and the plot to bomb other NYC landmarks reveals some of the problems in what is otherwise an effective and successful investigation. Despite the success of the FBI in uncovering the second plot to bomb landmarks, Rahman’s case revealed a lack of communication between federal agencies with regard to suspected terrorists. The State Department, the INS and the FBI each had a piece of the puzzle with regard to Rahman’s past and proclivities, yet he was allowed to remain in the US for three years while his followers plotted terrorist attacks in this country.

#### **D. LAWS, TREATIES AND CONVENTIONS**

The most significant impact of the 1993 WTC attack was that it proved to American law enforcement and government officials that international terrorists could

and would operate inside the United States. Prior to 1993 there had been no significant international terrorist activity within US borders. With this realization came demands from citizens and lawmakers for an increase in the powers of domestic law enforcement to meet this new threat. One important new law passed in the aftermath of the WTC attack was the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA). This law created the Foreign Terrorist Organization (FTO) list, which the Secretary of State has discretion over. The law also mandates that financial institutions block the assets and report the transactions of groups on the FTO list.

Information that the terrorists in the WTC attack had entered this country on short-term visas and then simply stayed past their expiration, as well as the extradition problems surrounding the Sheikh Rahman case, led to two new laws. The first was the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIR/IRA). This act “collects and makes readily available useful and current information about foreign student visa holders in the United States” (Countering the Changing Threat, 2000). The second law established the Alien Terrorist Removal Court (ATRC). This court was specially set up to handle cases involving the “use of classified information in cases involving the expulsion of suspected terrorists” (Countering the Changing Threat, 2000). At the end of 2000, this court had still never been used.

One final important document that appeared after the WTC bombing was Presidential Decision Directive (PDD) 39, *US Policy on Counterterrorism*, signed in June 1995. This document is significant because it delineates the missions and responsibilities of the various federal agencies involved in fighting terrorism. The PDD also discusses interagency cooperation and consequence management in the aftermath of terrorist incidents. Although PDD-39 states, “the US shall seek to deter terrorism...and will act vigorously to deal with terrorists and their sponsors”, it is significantly oriented towards reducing vulnerabilities and reacting to terrorist incidents and less concerned with actually deterring potential attacks.

## **E. SUMMARY**

The World Trade Center attack of 1993 provides the second case study of the law enforcement approach in combating terrorism. The important difference with the Pan Am

103 case was that the mastermind of the attack was not hiding in a country that provided him protection from the international community. Pakistan and the Philippines both wanted to help in Yousef's capture for their own reasons. The excellent cooperation of foreign law enforcement aided in his capture, but only after Ishtiaque Parker decided to turn Yousef in to authorities.

Because this attack took place inside the US, it required the use of law-enforcement methods and further solidified the authority of the FBI with respect to combating terrorism. The FBI did an outstanding job during the initial "crime scene" portion investigation and quickly gained valuable leads. The success in rounding up all of the suspects, other than Ramzi Yousef, in a few weeks, combined with a rapid indictment and trial proved to many that, as in the case of Pan Am 103, the FBI and Federal Prosecutors provided all of the skills necessary to deal with international terrorism.

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## **V. KHOBAR TOWERS, 1996**

While the Tradebom investigation solidified in the minds of many that the FBI and Justice Department were capable of rapidly and effectively dealing with terrorists who attacked the US, the next major terrorist incident would reveal some of the difficulties with this premise. In June 1996, terrorists detonated a bomb outside a US military barracks near Dhahran, Saudi Arabia. At the time, sanctions against Libya (to force the turn over of suspects in the Pan Am 103 case) were in full effect and successful prosecution of the suspects in the 1993 WTC attack were demonstrating that America could catch and prosecute terrorists. After the Khobar Towers attack, the FBI ran into hurdles thrown up by the Saudi government that kept the agents from effectively doing their job. This case was the first major overseas terrorist attack during the Clinton Administration. Despite obstacles encountered during the investigation, the Administration's and the FBI's belief in the law enforcement approach for handling terrorism would remain strong.

### **A. THE ATTACK**

The King Abdul Aziz Airbase, in eastern Saudi Arabia, was the home of the 4404<sup>th</sup> Fighter Wing (Provisional) of the US Air Force. These 2900 men and women worked hard to enforce the “no-fly zone” in Iraq, as part of Operation Southern Watch. During the evening of June 25, 1996, Staff Sergeant Alfredo Guerrero was at his observation post on the roof of Building 131. This building was an eight story residential barracks that housed approximately 100 Air Force personnel and sat at the corner of the American part of the compound, just inside the perimeter fence. At approximately ten o’clock that night, as Guerrero watched, a large tanker truck, followed by a white Chevrolet Caprice, drove along the road outside the fence and stopped closest to Building 131. The driver of the truck then backed his vehicle up against the fence. The driver and another man got out of the truck, hurried to the waiting car and drove away quickly, leaving the truck sitting just 80 feet from the building.

Staff Sergeant Guerrero, alerted by this strange behavior, called the security desk and then, with the help of two other sentries, began evacuating the floors below.

Unfortunately, they only had time to get down a few floors before the bomb inside the truck went off. The truck, investigators later determined, contained about 5,000 pounds of plastic explosives, with the destructive power of 20,000 pounds of TNT. The blast left a crater 85 feet wide and 35 feet deep where the truck had been. The blast also was strong enough to completely destroy the side of Building 131 that faced the fence, severely damage six other nearby buildings, shatter the windows in the rest of the complex and be felt as far away as Bahrain, 20 miles to the east. A total of 19 Americans and one Saudi civilian were killed, and over 200 Americans were wounded in the bombing.

## **B. THE IMMEDIATE RESPONSE**

The first response to the bombing was the deployment of the Foreign Emergency Response Team (FEST). This is an ad-hoc, rapid response team of representatives from various federal agencies. Their job is to assess the requirements for follow-on resources. In this case, the day after the bombing, President Clinton announced that an FBI investigative team would leave immediately for Saudi Arabia. The team consisted of 70 agents, including explosive experts, evidence response teams and other agents to assist in the investigation. This was the largest deployment of FBI agents in response to a foreign attack to date.

Within a week of arriving in country, the American investigators, working with their Saudi counterparts, determined that the perpetrators of the attack were affiliated with the people who carried out another attack on Americans six months earlier. The earlier attack, which took place in November 1995, left five American servicemen and two Indians dead after a car bomb exploded in an American military complex in Riyadh. After that attack, the Saudi investigators refused to share information or allow the FBI, CIA or US Military to interview suspects. In May 1996 the Saudis quickly convicted and beheaded four men accused in the attack without allowing the American investigators any contact or sharing of information. It was into this already tense environment that the agents tasked to investigate the Khobar Towers bombing landed in June 1996.

The pattern in the earlier investigation quickly reappeared as the Saudis refused to share evidence or leads with the FBI. The Saudis soon arrested 40 suspects, all Shiite Muslims believed to be members of the Saudi Hezbollah, a splinter of the Palestinian

Hezbollah Party. The Saudis refused to allow US agents to interview these suspects and limited the FBI to sifting through the rubble of the building in an effort to get clues. The FBI, in frustration, began reducing the number of agents in country until only “a handful” remained by late September (“White House”, 1996, November 2). Additionally, FBI Director Louis Freeh made three trips to the Saudi Kingdom during this time in an effort to improve the cooperation between his agents and the Saudi police. These trips produced minute improvements, but nothing substantial. Despite denials by the Clinton Administration that agents were returning due to lack of cooperation, by the end of October 1996 the final group of FBI personnel left the Kingdom. The investigation into the bombing of Khobar Towers, from the American standpoint, had come to a halt. The reasons for this lack of cooperation can be attributed to both the FBI and the Saudis. In a June 1998 article in the New York Times, Philip Shenon quotes a senior Clinton Administration official who blamed the problems on “a big cultural gulf” and a “[lack] of experience in dealing with each other in these matters” (Shenon & Johnson, 1998, June 21).

For its part, the Pentagon quickly announced that it would increase security for US military service personnel in Saudi Arabia by enlarging its intelligence collection efforts and by adding more sensors to the perimeter security of US bases to aid in the detection of bombs. Secretary of Defense William Perry asked retired General Wayne Downing to lead an investigation into the bombing. The report of this investigation, which was released some months later, concerned itself with determining responsibility on the part of US commanders in the attack and recommending added force protection measures, and did not attempt to investigate who the terrorists might have been. By the end of July the troops from the Khobar base were moved to Ridyahol, a more secluded base some distance away from Khobar.

As for the possibility of the Pentagon conducting an investigation into the origins of the attack and its perpetrators, in a June 1998 article in the New York Times, Pentagon spokesman Kenneth Bacon was quoted as saying, “We’ve been very clear from the beginning: this is the FBI’s job” (Shenon & Johnson, 1998, June 21). This attitude prompted a relative of one of the victims to speculate, in the same article, that the Pentagon was unwilling to pressure the Saudi government for fear of losing access to

important bases in the Kingdom. These bases are critical in the enforcement of “no-fly zones” in Iraq. The comment by Bacon and the focus of the Downing Report indicate that by the mid-1990s, the military had accepted the primacy of the FBI in countering international terrorism.

### C. THE LONG TERM RESPONSE

#### 1. Hani El-Sayegh

In March 1997 Canadian police arrested a Saudi national named Hani El-Sayegh and held him in connection with the Khobar Towers bombing. The Canadian government notified the FBI of their arrest and agents soon arrived in Canada to talk with the suspect. El-Sayegh met with the US investigators in May 1997 and informed them that he had information pertinent to ongoing terrorist investigations. The government of Canada decided to deport El-Sayegh to the US as a suspect in the Khobar Towers bombing. In June 1997, after arriving in the US, El-Sayegh made a series of admissions, some of which were unrelated to the Khobar Towers attack, and arranged a deal with the FBI based on those admissions. As part of his disclosure, El-Sayegh implicated senior Iranian intelligence officials in the Khobar Towers attack. The Department of Justice entered a plea agreement and indicted him on June 13, 1997.

Meanwhile, the Saudi government notified the US that it would seek the extradition of El-Sayegh as a suspect in the Khobar attack. El-Sayegh, alarmed at the possibility of extradition to Saudi Arabia, filed a motion to halt the extradition claiming certain execution if he returned to the Kingdom. Then, unexpectedly, he reneged on his plea agreement and refused to cooperate with the FBI. In September 1997, the Justice Department, suddenly without a witness willing to testify, filed a petition to dismiss the indictment and allow the extradition. El-Sayegh fought the extradition by seeking political asylum. The asylum was denied, and two years later, on October 11, 1999, El-Sayegh was expelled from the US to Saudi Arabia.

This chain of events seems very strange considering that the FBI was having so much trouble gathering clues in the Khobar investigation. The fact that the Department of Justice had, in custody, a prime suspect in the attack, and then turned him over to the Saudi government is hard to explain, especially considering the lack of Saudi cooperation

in the aftermath of the attack. In the indictment released by the Department of Justice in June 2001, El-Sayegh was named as the driver of one of the vehicles used in the attack.

## **2. The Iranian Connection**

The implication of Iranian officials by El-Sayegh would be only the first such accusation in this investigation. The Saudi government, by 1998, was also claiming that the Iranians were involved in the selection of the target and the training of the individuals involved. The US government was, apparently, reluctant to implicate the Iranians after the May 1997 election of a more moderate Iranian government led by President Mohammad Khatami. The new Iranian president was calling for better contacts with the West and both the Clinton Administration and the Saudi government saw this change in Iranian leadership as a chance to improve relations. President Khatami denied Iranian involvement in the bombing and, in an apparent effort not to increase tensions, President Clinton, in August 1999, made an unusual request by asking the Iranian government to help in the investigation. The Iranians went no further than to reiterate their innocence. According to the indictment released by the Department of Justice in 2001, Iranian intelligence officials provided advice and money to the group that planned and executed the bombing. The indictment goes on to note "the attack would serve Iran by driving the Americans from the Gulf region" (FBI Press Release-Khobar Towers Release, 2001, June 21).

## **3. A New Administration**

By the end of 1999 the investigation into the bombing of Khobar Towers had been effectively halted. The roadblocks put up by the Saudi government, the loss of an important source of information after the return of El-Sayegh to Saudi Arabia and the ponderous maneuvers of a reluctant administration allowed very little working room for the FBI. Despite the difficulties being encountered at the time, FBI Director Louis Freeh maintained his desire to solve the case.

According to a report in the April 2, 2001 issue of US News and World Report, Freeh cultivated a relationship with the Saudi Minister of Defense, Prince Sultan, over time and was finally able to get access to suspects held in Saudi jails. The report goes on to say that Freeh also waited until the Bush Administration took office to push for a

renewed emphasis on the case (Ragavan et al., 2001, April 2). By appealing to the new Secretary of State, Colin Powell, to intervene on his behalf with the Saudis, and by pressing to move the case from the US Attorney's office in Washington DC to the US Attorney's office in Richmond Virginia, Freeh was able to breathe new life into the investigation. By June 2001, on the eve of his retirement, Louis Freeh watched as a grand jury in Alexandria Virginia indicted 13 members of Saudi Hezbollah and one unnamed member of Lebanese Hezbollah.

The indictment came after five years of difficult maneuvers to gain information on the people responsible for the attack. The Iranians are identified as an important part of the plot, but the indictment stops short of charging them with any crime. According to one law enforcement official "roughly half of the 14 named defendants are already in custody in the Middle East" (Lichtblau, 2001, June 22). The FBI is hunting for the rest of the defendants and those already in custody have not yet been extradited to the US for trial.

#### **D. LAWS, TREATIES AND CONVENTIONS**

After the devastating terrorist attacks of the 1980s and early 1990s, the international community began to look for ways to increase the chances of halting or catching those responsible for these devastating bombings. After the Khobar Towers bombing, the US government took the lead in the international community to pass a UN Convention to assist nations in this area. The result was the ratification, in December 1997, of the International Convention for the Suppression of Terrorist Bombing. This Convention "expands the legal framework for international cooperation in the investigation, prosecution, and extradition of persons who engage in terrorist bombings" (Fact Sheet: International Terrorism Conventions, 1998). This Convention also mandates the criminalization of certain acts and the extradition of persons accused of such offenses. The language seems to indicate an effort by the authors to solve the kinds of problems encountered by the US during the Khobar investigation.

Two other important documents resulting from the Khobar Towers bombing were Presidential Decision Directives (PDD) 62 and 63. President Clinton signed both in May 1998, shortly before the Embassy bombings in Africa. PDD-62 restated much of

President Clinton's first policy paper on counter-terrorism, PDD-39, but also went further in rectifying areas of confusion encountered during the Khobar Towers investigation. An unclassified fact sheet explains that PDD-62 clarifies the roles of Federal agencies "in the wide range of US counter-terrorist programs, from apprehension and prosecution of terrorists to increasing transportation security, enhancing response capabilities and protecting...computer based systems" (Fact Sheet-Combating Terrorism, 1998). PDD-63 was directed at critical national infrastructures. It created the National Infrastructure Protection Center (NIPC), which is tasked with defending telecommunications, banking, transportation, and other critical infrastructures from electronic attack by terrorists.

#### **E. SUMMARY**

The US response to the attack at Khobar Towers followed the established law enforcement approach, but encountered unanticipated problems. The refusal of the Saudi government to allow the FBI access to its suspects effectively halted the in-country portion of the investigation. The one suspect taken into custody outside of Saudi Arabia provided valuable information to the FBI, including information on apparent Iranian involvement in the plot. Due to a series of unusual decisions by the Department of Justice, that suspect was released to Saudi Arabia, only to be indicted later in the US.

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## **VI. EMBASSY BOMBINGS, 1998**

Slightly more than two years after the Khobar towers bombing, terrorists launched a pair of deadly attacks at Americans abroad. These bombings, of the US Embassies in Kenya and Tanzania, would return terrorism to the forefront of American attention. The US response included, for the first time since the 1986 bombing of Libya, the US's offensive military capability. The response also included an attempt to address the larger terrorist apparatus, with the indictment of al-Qaeda members believed responsible for planning and financing the attack.

### **A. THE ATTACK**

The US Embassy in Kenya sits on “one of the busiest intersections in Nairobi’s commercial and government center” (Miller & Murphy, 1998). The morning of August 7<sup>th</sup> had begun like any other until a Mitsubishi pick-up truck drove up to the Embassy’s main entrance. The men in the truck tried to gain entrance to the Embassy compound but were turned away. Next, they drove down a side street, between the Embassy and the Ufundi Office Building and tried to gain admittance to the basement garage. Five Kenyan guards, armed only with wooden clubs, manned this entrance. When the guards began arguing with the occupants of the vehicle, an armed US Marine approached the truck to find out what was going on. Upon seeing the Marine, “five Arab-looking men” jumped out of the truck, began shooting at the Embassy guards, and running away (“Investigators May Have Found Key Bomb Clue”, 1998). One of the men threw a hand grenade in the direction of the guards. This commotion drew the attention of people inside the Embassy who “looked out the embassy window and saw people running away...[the grenade explosion] lured hundreds of workers to the windows, where they felt the full force of a larger bomb” (Lynch, 2001). The blast, from 500 pounds of explosives in the back of the pick-up truck, tore a chunk out of the wall of the Embassy and shattered the windows of the Embassy and all of the surrounding buildings. The Ufundi Building absorbed the brunt of the blast across the street. The explosion leveled the five-story office building, killing most of its occupants. Within the Embassy itself, twelve Americans and 31

Foreign Service Nationals were killed. In total, 212 people were killed and over 4500 wounded by the truck bomb detonated in Nairobi.

Unfortunately, that was not the end of the violence that day. A few minutes after the terrible events in Nairobi, a second bomb exploded, this time in Dar es Salaam, Tanzania. The driver of the truck carrying this bomb pulled up behind a blue water truck that was making a routine delivery to the Embassy. The water truck was halted at the gate while a Foreign Service National guard examined the underside with a mirror. The bomber detonated his deadly load approximately 35 feet from the Embassy wall. The water truck, the thick cement barrier and the closed gate absorbed most of the blast and as a result only eleven people were killed, including seven Foreign Service Nationals, and 72 were wounded, including two Americans. The damage to the Embassy itself was extensive; however, due to its location on the outskirts of the city, damage to other buildings and collateral loss-of-life were relatively low (Report of the Accountability Review Board, 1999).

## **B. THE IMMEDIATE RESPONSE**

As with the Khobar Towers attack, the first US response came in the form of two Foreign Emergency Response Teams (FEST), one for each country. According to the State Department's Accountability Board Report, both teams arrived at their respective destinations approximately 40 hours after the attacks occurred. While this may seem like a rapid response, the report notes that they were delayed for approximately 13 hours, due to mechanical problems, and experienced miscommunication between federal agencies about who would comprise the teams. As mentioned earlier, the purpose of these teams was to determine the requirements for follow-on resources. The primary response came in the form of rescue teams to treat the wounded and search for the missing, as well as FBI investigative teams to begin the search for clues and gather evidence in what would become a large criminal case. An FBI press release from August 10, 1998 notes "over 100 FBI personnel are now on site in Kenya and Tanzania" (FBI Press Release-Bombings, 1998). By August 27, 1998, according to another press release, that number had grown to "over 300 FBI personnel consisting of bomb technicians, laboratory personnel, investigators, Evidence Response Teams, and others have been in East Africa working side-by-side with Kenyan and Tanzanian authorities" (FBI Press Release-East

Africa, 1998). The rescue effort was substantial as well and included teams from the United States, France and Israel.

Unlike the Khobar Towers investigation, the FBI received ample cooperation from the Kenyan and Tanzanian governments. Investigators quickly located debris from each of the vehicles that carried the bombs. This allowed for rapid identification of the type of explosives used and produced leads with respect to who the bombers might have been. On August 11, the US Secretary of State, Madeleine Albright, announced a \$2 million reward for information leading to the arrest and conviction of those responsible for the attacks. By August 12 the Tanzanian police had arrested 14 people including “six Sudanese, six Iraqis, a Somali and a Turk” (“Investigators May Have Found Key Bomb Clue”, 1998). The FBI soon gained access to these suspects for questioning. The following day Kenya announced its first arrests in the investigation. A statement from Kenyan President Daniel Moi’s office noted that “a number of persons have been detained in relation to this incident and are proving useful leads in the circumstances surrounding the blast” (Lewthwaite, 1998).

The first significant apprehension actually happened on the day of the bombings, in Pakistan. On August 7, Pakistani border officials arrested Mohammad Saddiq Odeh while he was trying to cross into Afghanistan using a forged Yemeni passport. Pakistani authorities questioned him and realized that he was connected to the bombings in Africa. They quickly decided to extradite him to Kenya. At the same time US officials, alerted to the arrest, dispatched CIA agents to Pakistan to question Odeh. The Pakistani officials refused all foreign access to Odeh, and the CIA agents were forced to follow him to Nairobi in another plane. Immediately upon his arrival in Kenya, on August 16, the local police took Odeh into custody and allowed him to be questioned by FBI agents. During questioning Odeh revealed the names of two other men involved in the bombing who had also fled to Pakistan. On August 19, Pakistani authorities arrested the two men, a Saudi and a Sudanese, and both men were eventually brought to the US and indicted.

On August 18, six Kenyan police and 15 FBI agents raided The Hilltop Hotel in Nairobi. Extensive interviews of detainees had revealed that the hotel was where the terrorists constructed the bomb used in Kenya. The agents carried off bags of evidence,

but this news was quickly subsumed but a much more significant response to the attacks. On August 20, President Clinton ordered the US military to strike targets in Sudan and Afghanistan with cruise missiles in retaliation for the bombing of the Embassies. These strikes will be discussed in detail later in this chapter. The next significant development in the legal case was the return to the US of Rashed Daoud Al-Owhali. Al-Owhali was apprehended in Kenya shortly after the bombings and admitted being trained by al-Qaeda. The US Attorney who charged Al-Owhali, Mary Jo White, was quoted as saying “Today’s charges show this nation’s commitment to track down and prosecute all those who commit...acts of international terrorism.... This investigation will not end until every terrorist involved in the bombings...is identified, taken into custody and prosecuted to the fullest extent of the law” (FBI Press Release-East Africa, 1998). The next day Mohammad Odeh was also brought to the US and formally charged for his involvement in the bombings. A press release acknowledged and praised the support of the Kenyan and Tanzanian governments for their help in this case. Because of this support, by the end of the first month after the bombing US investigators had four of the 22 people they would later indict for this attack in custody.

### **C. THE LONG TERM RESPONSE**

#### **1. World-wide Hunt for Terrorists**

The long-term response to the bombing of US Embassies in Africa can be summarized as one of deciding that the larger terrorist apparatus, which supported and funded the perpetrators, must be dealt with in order to interrupt planning for future attacks. By 1998 the FBI and CIA had extensive records of Osama bin Laden’s al-Qaeda network. When all three of the suspects turned over by the Pakistani government in the African Embassy bombings admitted ties to al-Qaeda, the Clinton administration decided to act against other al-Qaeda members that it had identified. As with the suspects in the Embassy attacks, the suspects apprehended in this wider-scoped operation were those that the FBI and CIA had enough evidence against to warrant an indictment in US Federal Court.

The first of these suspects was a former US Army sergeant named Ali Mohamed. Mohamed had served in his native Egyptian Army before moving to the US and joining the US Army. Originally subpoenaed to testify in another case, Mohamed evidently

perjured himself and was immediately arrested. Meanwhile, evidence uncovered during the investigation into the Embassy bombings linked him to the attacks and, in September 1998, Mohamed was charged in a closed hearing for his involvement in the attacks. In October 2000, he pleaded guilty to the charges and claimed to be a member of al-Qaeda. As part of a plea agreement, Mohamed detailed his involvement in the Embassy bombings. Recruited in the late-1980s, he was ordered to Nairobi by Osama bin Laden to scout for potential US, British, French and Israeli targets there.

Other suspects followed from all over the world. An October 1998 article in the Christian Science Monitor reported that there were “some two dozen suspected bin Laden associated arrested in seven countries on three continents since the embassy attacks” (Landay, 1998). These included Khalfan Khamis Mohamed, who was captured in South Africa in October 1999 and quickly extradited to the US. In an update posted on the State Department web site from August 7, 2000, the Department listed its efforts in the two years since the bombings. On June 16, 1999 the Justice Department released the indictment of 17 men connected with the bombings. The site notes that the 17 men had been indicted “for their involvement in the two bombings and terrorist crimes...six of these suspects are in US custody awaiting trial...three are in custody in the United Kingdom pending extradition...[and] eight others remain at large” (Fact Sheet: US Counterterror Efforts, 2000). The captures of suspects were proceeding quickly. Now it was up to the Justice Department to successfully try and convict these people.

The trial of four of the defendants began on January 3, 2001. The men to go on trial first were Mohammad Saddiq Odeh, Rashed Daoud Al-Owhali, Khalfan Khamis Mohamed and Wadih El-Hage, a naturalized US citizen. Both Mohamed and Al-Owhali were accused of crimes carrying the death penalty. The prosecution took tree months to deliver 1300 exhibits and call 92 witnesses in proving its case. On May 29, 2001, the jury return guilty verdicts for all of the men. The rest of the men listed on the indictment remained at large, or continued to successfully resist extradition from England using legal appeals.

## **2. The US Missile Attacks**

The President and his advisors also decided that more active steps were necessary to show US resolve in combating terrorism. On August 20, 1998 the US military launched Operation Infinite Reach, a cruise missile attack on suspected terrorist facilities in Sudan and Afghanistan. In a New York Times article published on October 27, 1999, James Risen details the timeline of events leading up to the missile strikes. He notes that the White House ordered an initial target list of sites connected with bin Laden on August 8, 1998, the day after the attack. A list of sites meeting the criteria already existed and was duly produced by the CIA. While the military and White House considered the list, according to Risen, another report, received on August 13, indicated that bin Laden and others would be meeting at a camp near Khost, Afghanistan on August 20. This information lent urgency to the decision-making. On August 19, the President decided on a final list of targets, including six camps in Afghanistan and a chemical plant in Sudan. If Risen's information is accurate, it presents some problems with statements made by Administration officials about the missile attack. Such a rapid response contradicts President Clinton's statement that the missile attack was "to strike at terrorist-related facilities in Afghanistan and Sudan because of the imminent threat the presented to our national security" and Under Secretary of State, Thomas Pickering's statement that "the main purpose of the strikes was not retaliation; it was to prevent further terrorist attacks" ("Key Quotes", 1998).

Since no suspects were in US custody until after August 10, the request for targets related to bin Laden on the 8<sup>th</sup> indicates a desire by the White House to strike back at any meaningful target, regardless of its connection with the Embassy bombings. Furthermore, the specific targeting of a camp where Osama bin Laden was believed to be on the day of the attacks contradicts a statement by Secretary of Defense William Cohen on August 21<sup>st</sup>, "we did not target, specifically, individuals" ("Key Quotes", 1998). The missile attack set off a storm of debate about the appropriateness of responding with military force. The President and his advisors stood by their decision, apparently satisfied that they had dealt a significant blow to al-Qaeda with the missiles. National Security Advisor Sandy Berger stated on August 21, 1998, "I am absolutely certain that had we not done

this (military strikes in Afghanistan and Sudan) we would have been the victim of other terrorist attacks in the not too distant future" ("Key Quotes", 1998).

#### **D. LAWS, TREATIES AND CONVENTIONS**

After the capture or indictment of 22 men in connection with the bombings of the Embassies, work began on new international and unilateral US resolutions to help speed the process in future investigations. The primary purpose of these diplomatic maneuvers was to coerce help from nations, such as Afghanistan, in capturing the men indicted for the bombing. As soon as investigators had sufficient evidence to implicate Osama bin Laden, and the other members of al-Qaeda known to be hiding in Afghanistan, President Clinton authorized the missile strike. President Clinton also, on the same day, amended Executive Order 12947 adding al-Qaeda to the State Department's list of terrorist organizations. This would effectively freeze their assets in the US and prohibit contact with al-Qaeda by US citizens. When that did not produce any results, the President signed an Executive Order, in July 1999, imposing sanctions against the Taliban rulers of Afghanistan, banning all trade with the Taliban, and freezing their assets in the United States. The goal of this order was to make the Taliban surrender Osama bin Laden for prosecution. Meanwhile, the US lobbied in the UN for a resolution aimed at the same result. In October 1999 the UN Security Council unanimously adopted Resolution 1267, which demanded the surrender of bin Laden and imposed further sanctions against the Taliban.

#### **E. SUMMARY**

The response to the bombing of the Embassies in Kenya and Tanzania was different from the response to the Khobar Towers bombing in a number of ways. First, the FBI received unreserved assistance from the countries where the attacks occurred. The attitude of both Kenyan and Tanzanian authorities was a welcome change, for the FBI, from the behavior of the Saudi officials. In its numerous press releases after the Embassy bombings, the FBI was careful to praise the assistance provided by the two African nations. This help allowed for a much faster apprehension of suspects, evidence that resulted in indictments of al-Qaeda leaders, and a trial that began in January 2001, five months *before* the indictments were released in the Khobar Towers case.

The assistance from Pakistan, in arresting and turning over three of the terrorists, was also a welcome event. Pakistan had earlier assisted US authorities with the capture of Ramzi Yousef, in connection with the WTC bombing in 1993, and Mir Aimal Kanzi, who was later convicted of killing two CIA employees and wounding three others outside CIA headquarters in 1993. The assistance from Kenya, Tanzania and Pakistan made the job of the FBI much easier and seemed to validate the belief that other nations wanted to fight terrorism as much as the US, especially if participation in that fight entailed merely handing over suspects who were sure to be treated well and afforded excellent legal representation in the US.

Also, for the first time since 1986, the US elected to use military force in response to a terrorist attack. The missile attack sparked an intense debate over its appropriateness and effectiveness. This attack is the only time that the US used military force in response to a terrorist attack during the period between 1988 and 2000.

## **VII. THE USS COLE, 2000**

The final terrorist attack against the United States that will be examined in this study is the October 2000 bombing of the USS Cole. This was the last large-scale attack prior to the September 11, 2001 suicide attacks on the Pentagon and World Trade Center. These later attacks would bring drastic changes to the US counter-terrorism policy. The actions taken by the Clinton Administration after the attack in Yemen were influenced by the fact that the FBI anticipated problems similar to those encountered in Saudi Arabia after the Khobar Towers attack, and tried to avoid them.

### **A. THE ATTACK**

The USS Cole is a guided missile destroyer, 505 feet long with a crew of 350 men and women. On the morning of October 12, 2000, the Cole arrived in the Yemeni port of Aden, to refuel on its way to the Persian Gulf. At a few minutes after noon, as the ship was moving into position to take on fuel, she was approached by the small harbor vessels which typically take mooring lines from the ship to the floating fuel station in the harbor. One of these small boats took a line from the Cole to the fuel station and then returned to the port side of the US ship. Sailors on the deck reported later that the two men in the 20-foot harbor craft stood at attention as it drew up against the outer hull of the Cole and then exploded, killing the two men instantly. Investigators later determined that the boat was loaded with C-4 military plastic explosives. The explosion tore a 40-foot by 40-foot hole in the hull of the Cole, right at the waterline. Sailors in the immediate area of the blast were killed, burned or trapped as the explosion ripped through one of the main engine rooms and an auxiliary engineering space immediately adjacent to the hull where the explosion occurred. The Cole shook violently as shock waves, strong enough to warp hatchways at the top of the ship, passed through her structure. Later, after valiant efforts by the crew and rescue workers to free trapped sailors and keep the ship afloat, the Navy determined that 17 sailors were killed and 39 were wounded by the attack.

## **B. THE IMMEDIATE RESPONSE**

The US Central Command (CENTCOM), which is responsible for US forces in Yemen, quickly dispatched a medical assessment team, consisting of doctors, nurses, and communications people. CENTCOM also sent a medical trauma team, which was already in Saudi Arabia. The team consisted of an additional two doctors, two nurses and three medical technicians. News of the explosion reached Washington just before six in the morning. The Foreign Emergency Response Team (FEST) was quickly assembled and departed later that morning for Yemen. Additionally, a Marine Corps Fleet Anti-terrorism Security Team (FAST) arrived in Yemen to provide security for the Cole and her crew while the latter worked to keep the ship afloat and free trapped sailors. All of this activity occurred within a day of the attack. In a news conference the day after the attack, Pentagon spokesman Kenneth Bacon, announced that, in addition to the groups already in Yemen, two groups of FBI agents, totaling 100, were on their way to Yemen to begin a criminal investigation into the bombing (Bacon, 2000, October 13). The Clinton Administration was following its familiar response plan for terrorist attacks against Americans abroad, but not with unanimous approval in the State Department. Apparently, the US Ambassador to Yemen, Barbara Bodine, felt that large numbers of US personnel in Yemen was not a good idea. She initially argued for limiting the FBI contingent to about 15 personnel.

For their part, the Yemeni government was also trying to figure out what caused this terrible explosion in their port. Strangely enough, they did not believe initially that the explosion was an act of terrorism. In a news conference on 14 October, Yemeni President Ali Abdallah Salih stated that the explosion was caused by an accident on the ship (Schneider & Suro, 2000, October 15). This belief was echoed in Yemen's print and broadcast media. The Foreign Ministry also released a statement the same day stating that Yemen "does not accept the presence of terrorists on its territories" (as quoted in Schneider & Suro, 2000). Nevertheless, the Yemenis were, at the same time, beginning to detain and question witnesses. By October 17 investigators followed leads to an apartment near the port, where they found bomb making materiel. Faced with this evidence President Salih quickly reversed himself and admitted that the explosion was a "planned criminal act" (Sipress & Vise, 2000, October 18).

While US officials were quick to praise Yemen's willingness to allow US investigators into the country, they also admitted that their agents were not participating in the questioning. The agents, at this point, were working hard to gather physical and forensic evidence from the harbor and the Cole itself. The FBI was very anxious to work out procedures for cooperation between their agents and the Yemenis for the questioning of witnesses and suspects. At the same time, no doubt because of the difficulties encountered during the Khobar Towers investigation, the agents did not even attempt to have the Yemenis impound vehicles, secure the crime scene or share records. In an effort to keep their investigation on track, FBI Director Louis Freeh and the FBI's head of counter-terrorism, Dale Watson, flew to Yemen on 17 October to personally negotiate an agreement of cooperation in the investigation.

For its part, the Department of Defense announced that agents from the Naval Investigative Service (NIS) would cooperate with the FBI on the investigation. DOD's primary emphasis, as in the Khobar Towers attack, focused on determining if any errors in judgment had caused the deaths of the 17 sailors. Less than a week after the bombing, Secretary of Defense William Cohen announced that he would appoint two senior retired officers to conduct an investigation into the bombing "with special focus on whether there were security lapses" (Sipress & Vise, 2000, October 18). The investigators released their findings on January 9, 2001 and, although they did not single out one individual for blame, the investigators did find "significant shortcomings in security throughout the region" (Terrorist attack on USS Cole, 2001).

By October 25, less than two weeks after the bombing, Yemeni and FBI investigators had identified and searched three safe-houses used by the terrorists. The first turned out to be a workshop for preparing the boat used in the attack, the second was where the terrorists built their bomb and the third, an apartment overlooking Aden's port, was a lookout station. From these locations investigators followed leads to Saudi Arabia, a farming region north of Aden known as Lahej, and the Yemeni province of Hadramaut, a remote part of the country where the central government's influence is minimal. At this point, the Yemenis took their first suspect into custody.

In an interview reported in the Washington Post on October 26, 2000, Yemeni President Salih confirmed that the suspect was an Egyptian man with ties to Islamic militants who had fought in Afghanistan against the Soviet Union. The same article also reported that Clinton Administration officials were acknowledging a growing body of evidence that Osama bin Laden and his al-Qaeda organization were behind the attack on the USS Cole (Sipress & Vise, 2000, October 26). Nevertheless, a group of 40 FBI agents left Yemen on October 25, with another similarly sized group departing the next day.

The FBI acknowledged the departure of the agents, citing an end to the physical evidence-gathering portion of the investigation as the reason. However, a statement released by the State Department, on October 27, echoes the statements made by the Clinton Administration at the height of its problems with the Saudi Government during the Khobar Towers investigation.

The US Government would like to express its appreciation to the Government of Yemen for its early cooperation given to the investigators working jointly on the forensic examinations at various locations in Yemen...The next critical phase will require Yemeni and US personnel to work as partners in the collection of information and participants in the interview process of witnesses to this criminal act of terrorism. We count on President Salih's commitment of full cooperation. (Statement on Investigation of the USS Cole bombings, 2000)

This statement appears to be an attempt to forestall official resistance by the Yemeni Government to FBI participation in questioning of suspects and witnesses. Evidently, the statement failed when, the day after it was released, President Salih told a Yemeni television interviewer "it is out of the question for Americans to investigate Yemenis" (Sipress, 2000, October 29). This official standoff would continue for months.

### C. THE LONG TERM RESPONSE

The long-term response to the bombing of the USS Cole encompasses a much shorter period of time than the other attacks examined in this study. The terrorist attacks of September 11, 2001 overshadowed the investigation in Yemen. Al-Qaeda members, the primary suspects in the attack on the Cole, became part of the larger, post-September 11 effort by the United States. There were, however, some interesting developments during the long-term investigation into the bombing that bear examination.

Despite the Clinton Administration and Yemeni Government being at loggerheads over how to proceed in the investigation, less than a month had passed since the attack. With the American public and press still demanding to know what was being done, the US investigators began serious negotiations to gain some sort of meaningful participation in the search for those responsible; yet the FBI met obstacles at every turn. On November 2, 2000 the Washington Post reported that problems arose over a videotape given to the FBI by the Yemenis. The tape, taken from a harbor security camera on the day of the attack, had been edited. The Yemenis refused to give the FBI an unedited copy.

The main point of contention between the two groups was US participation in the questioning of suspects and witnesses. Initially, as indicated by the statements of President Salih, the Yemenis refused to allow US agents to take part in questioning. Later, the Yemenis demanded access to all evidence collected by the FBI, anywhere in the world, in exchange for cooperation in the questioning; the FBI flatly refused. The reason that the FBI needed to be present during questioning was that US courts require an unadulterated chain of evidence. Without first hand transcripts, the FBI could not swear that there had not been changes made to the answers. As one US official put it, "This is a fundamental issue. If we are ever going to indict someone, there has to be an evidence trail that can stand up in a court of law" (Vise, 2000, November 2).

While these negotiations continued, the Yemenis took four men into custody for involvement in the bombing. The investigators had followed leads to Lahej, the farming area north of Aden, where they learned that officials in that region issued illegal identity cards to the four men. Both the men in custody and the officials from Lahej had ties to the Afghani mujahadeen. The argument that al-Qaeda was involved in the bombing was gaining credibility in the Clinton Administration.

Finally the Clinton Administration and the Yemeni Government reached an agreement over the participation of US agents in the questioning of suspects. On November 29, 2000 they signed a memorandum stipulating that US investigators could be present and submit questions in writing to Yemeni officials, who would pose them to the suspects. Although the Clinton Administration hailed the breakthrough, Vincent Cannistraro, a former director of counter-terrorist operations for the CIA, noted "the lack

of direct interrogation would make it difficult for investigators to build a case that would hold up in American courts" (Vise & Eggen, 2000, November 30).

In January 2001, the State Department offered a \$5 million dollar reward for information on the bombing. By June 2001, Yemen was detaining nine men in connection with the bombing of the USS Cole. The Yemeni Government was ready to begin trials for the suspects, against FBI wishes that the trials be delayed while US agents gathered more evidence. Tensions over the FBI's access to these men had lessened and, under pressure from the US Embassy in Yemen, the number of US investigators had been reduced to approximately 15 agents. The man in charge of these agents was John O'Neill, an FBI counter-terrorist specialist from the Bureau's New York office. He and US Ambassador Barbara Bodine clashed repeatedly about the agents' presence in Yemen. She refused to allow O'Neill and his agents to carry automatic rifles for self-defense. Therefore, when intelligence detected a new threat against Americans in Yemen, O'Neill pulled all of his agents out of the country for security reasons. Bodine, citing the FBI's overly aggressive tactics refused to allow the agents back into Yemen the following month. For its part, the Yemeni government responded quickly by arresting nine people suspected of plotting these anticipated, but never executed, attacks. Despite State and Justice Department attempts to end the friction in Yemen, the investigation had, once again, stalled. (Loeb, 2001)

One final break in the investigation into the bombing of the Cole occurred after the suicide attacks against the US by al-Qaeda terrorists in September 2001. In the aftermath of those attacks, Pakistan was working hard to identify and arrest suspected al-Qaeda operatives in that country. One of the men identified by both the US and Pakistan was Jamil Qasim Saeed Mohammed, a Yemeni student studying in Karachi. In late October 2001, Mohammed was arrested by Pakistani intelligence agents and handed over to the US for extradition. Mohammed was the first suspect captured by the US outside of Yemen after the investigation started, one year earlier.

#### **D. LAWS, TREATIES AND CONVENTIONS**

The bombing of the USS Cole did not result in any new laws or treaties for the US Government. As mentioned earlier, most of the evidence produced by the US

investigators pointed to al-Qaeda involvement in the attack. Since the September 2001 attacks in the US, the efforts to deal decisively with al-Qaeda have subsumed any earlier efforts. The only agreement signed between the US and Yemen during the investigation was a memorandum of understanding on the methods to be used during questioning of suspects by US agents.

#### **E. SUMMARY**

At the time of this writing, six months after the attacks in New York and Washington DC, progress in the USS Cole investigation cannot be measured except in terms of the progress in the war on terrorism taking place around the world. The only suspect that the US has in custody has not yet been indicted. Given the circumstances of his capture and extradition, it can be argued that Jamil Qasim Saeed Mohammed would not even be in custody if not for the attacks of September 2001. The investigation into the bombing of the Cole saw the same sort of friction as the Khobar Towers investigation. The day after the bombing of the USS Cole, the former chief of counter-terrorism for the FBI, Bob Blitzer, said, "It is an act of war, blowing up a US ship. It is absolutely an act of war" (Vise & Loeb, 2000, October 13).

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## **VIII. ANALYSIS OF THE LAW ENFORCEMENT APPROACH**

In order to determine the effectiveness of the law enforcement approach for combating terrorism, we must first consider some of the advantages and disadvantages of that approach as espoused by its supporters and detractors. Having gained an understanding of the perceived effectiveness and potential drawbacks of the law enforcement approach, it will then be possible to weigh its demonstrated effectiveness, based on the case studies presented here, with the perceived performance to determine what the approach actually delivered during the period from 1988 to 2000.

### **A. ADVANTAGES**

#### **1. Democratic Traditions**

The foremost reason why the United States pursued terrorists with vigorous law enforcement is simple. We are a nation based on the rule of law and Americans see themselves as the world's preeminent liberal democracy. The American democratic tradition is an idea that has not only been enshrined in US national consciousness, but that Americans have worked very hard to export around the world. In the Report of the National Commission on Terrorism (2000), the commissioners acknowledged "US leaders must find the appropriate balance by adopting counter-terrorism policies which are effective but also respect the democratic traditions which are the bedrock of American strength" (Countering the changing threat, 2000). DJC Carmichael noted, as far back as 1982, that "an effective policy requires...measures which deflate the appeal of terrorism ...and demonstrate the superiority of established civil procedures" (Carmichael, 1982, p. 6). To pursue terrorists without justifying these actions in an appropriate liberal democratic frame would be to violate America's strongest traditions. It is also this dedication to principles that presents the second advantage to the legal approach.

#### **2. Builds Credibility**

The law enforcement approach builds credibility with other nations. The fact that in the pursuit of terrorists the US has proved loyal to its professed tradition, has allowed it to gain support among the community of nations. The law enforcement approach legitimizes US calls for international support when pursuing terrorists. It is this support in

the United Nations that gained approval of the five “Resolutions on Measures to Eliminate International Terrorism” adopted between 1985 and 1997. This support also resulted in a vote of 15 to zero in support of Resolution 1267 “requiring the Taliban to turn over Osama bin Laden to a country where he will be arrested and brought to justice” (Fact Sheet: US Counter-terrorism Efforts”, 2000).

### **3. Takes Terrorists Out of Action**

The law enforcement approach takes terrorists out of action by capturing and trying them and putting them in jail, where they can no longer commit crimes. As David Tucker noted in *Combating International Terrorism*,

Not only do such proceedings take terrorists out of action, they may well deter others from committing terrorist acts...going after individual terrorists through arrest and trial may be one of the few ways that we can put at risk something the terrorists value, namely their freedom, if not their lives. (Tucker, 1999)

This quote also alludes to another potential benefit of the law enforcement approach, that of deterrence. Since this study argues that deterrence needs to be the central piece of a counter-terrorist policy, the discussion of the law enforcement approach’s deterrent effect will be saved for later in this chapter.

### **4. Hampers Terrorist Activity**

By publicly indicting and globally pursuing terrorists, the US reduces their clandestine support and severely impairs their ability to travel freely, thereby hampering terrorist’s ability to plan and execute terrorist attacks. This advantage is closely tied to building credibility with other nations. A Fact Sheet released by the State Department in August 1999 noted, “Since 1993, a dozen suspected international terrorist fugitives have been apprehended overseas and turned over to the US to stand trial” (Fact Sheet: US Counterterrorism Efforts, 1999). Supporters of the law enforcement approach point to these facts as proof that it reduces the ability of terrorists to operate against the US. Within the scope of this work, it must be noted that during three of the five investigations, Pakistan rendered valuable assistance in capturing and returning to the US suspects wanted by US authorities. These included Ramzi Yousef in the WTC

investigation, Mohammad Saddiq Odeh and two other men in the embassy bombings investigation, and the one unnamed suspect in the USS Cole investigation.

### **5. Judicial System Does Not Stop**

Finally, the law enforcement approach maximizes the capabilities of the US judicial system that, once set in motion, do not stop. Once indicted, a terrorist can be pursued for an indefinite period of time. This provides two benefits. First, it keeps pressure on the terrorists. This goes back to the point made in the last paragraph about impairing the terrorist's ability to operate. Second, as Tucker noted in *Skirmishes at the Edge of Empire*, "the judicial response focuses on the facts and unfolds slowly, two factors that diffuse emotions and encourage a reasoned response" (1997, p. 81).

## **B. DISADVANTAGES**

### **1. Concedes the Initiative**

The most damaging aspect of the law enforcement approach is that it concedes the initiative to the terrorists and, in doing so, becomes reactive in nature. By criminalizing terrorism and responding with prosecution, the law enforcement approach requires the terrorist to actually commit a crime before the US can respond. This makes the US policy episodic by nature; only taking substantial actions in the aftermath of a terrorist attack. To be sure, the stated policy of the US government is that it will be proactive in its approach to combating terrorism; however, the evidence from the period covered in this study demonstrates conclusively that the actions taken by the US government against terrorism have, almost universally, been in response to a terrorist attack. It is this aspect of the US approach to combating terrorism that makes a study of that approach's value most effective when that study examines the US responses to terrorist attacks.

### **2. System is Slow to React**

The law enforcement approach to combating terrorism is too slow to react. For the same reason noted by David Tucker above, this approach takes time to gather facts, prepare a criminal case and conduct a trial. The bombing of Pan Am flight 103 occurred in 1988. Indictments of the two men eventually brought to trial were filed in 1991, three years later. The two Libyan suspects were finally handed over in April 1999, after eight years of diplomatic efforts to pressure Libya for extradition. The trial concluded on

January 31, 2001, with only one conviction. In other words, it took 12 years, using law enforcement, to resolve a terrorist incident that caused the deaths of 270 people. The other investigations studied in this work are worthy of note in this respect. The final trial of Ramzi Yousef concluded more than three years after the bombing of the WTC. More than five years after the Khobar Towers attack, there are indictments only and no prosecutions to date in that investigation. The trials for the five men indicted in the attacks on US embassies in Africa were completed three years after the attacks, with the remaining 17 indicted conspirators still at large. The attackers of the USS Cole have never been indicted, so no trial is pending. The times from attack to trial are varied and, in general, getting faster; however, the lag time still allows the dedicated terrorist the freedom to continue attacking Americans.

### **3. Incomplete Resolution**

Prosecution of terrorists can lead to an incomplete resolution of the incident. One example of an incomplete resolution to a terrorist incident would be if the prosecution of the terrorists apprehended results in the *de-facto* exoneration of others who may be guilty as well. This situation is widely believed to be the case with Muammar Qadhafi in the Pan Am flight 103 bombing. In their Report on the Changing Threat of International Terrorism (2000), the commissioners acknowledge that;

The Pan Am 103 case demonstrates the limitations of the law enforcement approach to achieve national security...[because] ...prosecuting and punishing two low-level operatives for an act almost certainly directed by Qadhafi is a hollow victory, particularly if the trial results in his implicit exoneration. (Countering the changing threat, 2000)

The example of Libya and the bombing of Pan Am flight 103 shows another type of potentially incomplete resolution. Since the law enforcement approach focuses on the individual terrorist (and most often the perpetrators of the attack), it may fall short in dealing with the state sponsors of terrorism. In the State Department's Patterns of Global Terrorism (2000), one of the four basic policy tenets for US counter-terrorism is to "isolate and apply pressure on states that sponsor terrorism" (Patterns, 2000). PDD-39, President Clinton's Policy on Counter-terrorism, reinforces this policy, stating "[the terrorist's] return for prosecution ...shall be a continuing central issue in bilateral

relations with any state that harbors or assists them (PDD-39, 1995). The fact is that there is really no means provided by international convention to punish countries that either actively or passively support terrorists. While the US might claim that it will “vigorously apply extraterritorial statutes to...apprehend terrorists outside of the United States” (PDD-39), those statutes can only be applied with the consent of the state where the terrorist is hiding.

The case studies examined here demonstrate the failure of the law enforcement approach to address the state-sponsors of terrorism. Table 1 illustrates this problem. In four of the five cases there was clear state involvement; Libya in the Pan Am flight 103 bombing, Iran in the Khobar Towers bombing, and Afghanistan in the attacks on the US embassies and the USS Cole. In none of the cases did the US respond to this state sponsorship directly. The sanctions placed on Libya for much of the 1990s were intended to force the turnover of the two suspects in the Pan Am flight 103 case, not to punish Libya for supporting the bombing. The missile attacks into Afghanistan in the aftermath of the embassy attacks were claimed by the Clinton Administration to be aimed at the terrorists themselves, not Afghanistan, and finally, the sanctions placed on Afghanistan by UN Resolution 1267 were to gain the surrender of Osama bin Laden only.

	Evidence of State Sponsorship?	State providing Support	Punitive Action by US
<b>Pan Am 103</b>	Yes	Libya	None
<b>WTC</b>	No	N/A	N/A
<b>Khobar Towers</b>	Yes	Iran	None
<b>US Embassies</b>	Yes	Afghanistan	None
<b>USS Cole</b>	Yes	Afghanistan	None

Table 1. State Sponsorship and US Response

## C. EVALUATING THE LAW ENFORCEMENT APPROACH

### 1. Initial Evaluation

In the introduction, this thesis outlined the requirements for an effective counter-terrorist policy. They were; that a policy must either deter terrorists or, failing that, defend against them to stop their attacks from being effective. The effectiveness of the

law enforcement approach to combating terrorism can also be evaluated using law enforcement's own measures of effectiveness. These are; the numbers of people indicted, convicted and incarcerated for committing terrorist crimes. By either method, the law enforcement approach failed to effectively combat terrorism from 1988 to 2000. This approach did nothing to either deter or actively defend against terrorism and was not even effective at capturing, convicting and incarcerating terrorists who attacked the US. A comparison of the stated advantages of the law enforcement approach with the data from the five case studies shows significant inconsistencies; the disadvantages, however, proved largely consistent with the data gathered in the five case studies.

## **2. Advantage Comparison**

The most persuasive argument used for the law enforcement approach is that it is harmonious with US democratic traditions and laws. The fact is that other means to combat terrorism available to policy makers are also in keeping with these traditions, despite the vocal opposition of those who feel that the law enforcement approach is the only way to deal with terrorists. Article 51 of the United Nations Charter guarantees the inherent right of self-defense to member nations. The Charter only stipulates that "measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council". This language leaves many options available for counter-terrorist strategies, including military actions to disrupt terrorist organizations and efforts. Another area of much controversy is the area of preventive attacks against terrorists. There are many articles concerned with this debate, but again neither the UN Charter, nor US law denies the right of preemptive self-defense.

The notion that using a law enforcement approach builds credibility with other nations is also suspect. While some support may have been gained with this approach in gaining ratification of international conventions, the practical applications were much more limited. In the cases of the Khobar Towers and USS Cole investigations, the resistance of the Saudi and Yemeni governments to the efforts of the FBI was a cultural resistance to foreigners entering their countries and demanding full cooperation to investigate a politically sensitive event. Simply put, the Saudi and Yemeni governments did not care that the US was going to great lengths to ensure a fair and impartial trial for any suspects, as much as they cared that dozens, even hundreds, of foreigners were inside

their borders, asking unpleasant questions, demanding access to places and information, and expecting to extradite any person found to have connections with the attacks. This strained the hospitality of Arab culture and offended the people of these nations in their own homes. The State Department also had a problem with the way the FBI conducted the investigation; recall the efforts of the US Ambassador to Yemen, Barbara Bodine, to limit the numbers of investigators sent there after the bombing of the USS Cole. No doubt, these situations were the type envisioned by Abraham Sofaer in 1985 when he wrote, “In the international arena, while we have conventions, agreements and customs that make many terrorist acts universal crimes, international practice and doctrines greatly limit the enforcement of these norms” (Sofaer, 1985)

The claim that the law enforcement approach takes terrorists out of action by catching and convicting them does not agree with the facts in the five case studies examined here. A review of the cases shows that a total of 44 people were indicted for these attacks. Of those 44 people, 12 were eventually convicted in criminal trials. This gives the law enforcement approach a 27% success rate in the five most damaging terrorist attacks against the US between 1988 and 2000. This means that a terrorist had only a one in four chance of being convicted *if caught and indicted*, after committing an attack against the US. Table 2 shows the US success rate in each of the five case studies.

	# of people indicted	# of people convicted	% success rate for conviction
<b>Pan Am 103</b>	<b>2</b>	<b>1</b>	<b>50%</b>
<b>WTC</b>	<b>6</b>	<b>6</b>	<b>100%</b>
<b>Khobar Towers</b>	<b>14</b>	<b>0</b>	<b>0%</b>
<b>US Embassies</b>	<b>22</b>	<b>5</b>	<b>22%</b>
<b>USS Cole</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Total</b>	<b>44</b>	<b>12</b>	<b>27%</b>

Table 2. Conviction versus Indictment rates

These facts are further substantiated by a report of the Transactional Records Access Clearinghouse (TRAC) of Syracuse University. The report, titled “Criminal Enforcement Against Terrorists” (posted November 27, 2001), covers the years 1997-2001 and reveals some interesting information about the success of law enforcement in

dealing with terrorists. The report shows that, during the five-year period, a total of 385 individuals were referred to the Justice Department for prosecution in international terrorist cases; of these cases the FBI referred 334, or 86.8%. The Justice Department declined to indict 53% of the referred cases during the same five-year period, citing “lack of evidence of criminal intent” and “weak or insufficient admissible evidence” most often as the reason for the declination of indictment.

The data contained in this report reinforces three very important problems with the law enforcement approach to dealing with international terrorism. First, and definitely most important, assuming the FBI understands the unavoidable need for admissible evidence in order to indict a terrorist (as evidenced by the extensive investigations conducted in each of the case studies), the 42 terrorists indicted in the five case studies probably represent only a portion of the people found to have played a part in the attacks. For the rest, we can assume, the FBI was not able to gather sufficient evidence and, therefore, did not even bother to try to indict. Assuming for a moment that the ratio of people found to be involved (but without sufficient evidence to indict) to the number indicted is in proportion with the number of people indicted to the number convicted, then roughly 163 people were involved in the attacks.

Second, and very much related to the first, since “the odds of declination for terrorist cases was twice as high [as all other cases]....It must be assumed that collecting solid evidence about a terrorist is harder than for drug, immigration and white collar criminals” (Criminal Enforcement Against Terrorists, 2001). The difficulty in collecting evidence should be readily apparent after examination of the case studies in this work. The numbers of agents committed to the investigations in the four attacks that occurred overseas, the problems encountered with the Saudi and Yemeni governments, and the length of time required for each are evidence of this difficulty.

Finally, the TRAC report points out that those international terrorists who were actually convicted received relatively light sentences for their crimes. According to the report’s information on 19 people convicted in international terrorist cases between 1997 and 2000, eleven received one year or less of prison time. However, since the remaining eight received very long sentences, the average sentence for a person convicted in an

international terrorist case was 65 months. These numbers would not have included Ramzi Yousef or the other men convicted in the 1993 WTC bombing as their trials were concluded by 1996.

Another perceived advantage of the law enforcement approach is that by globally pursuing terrorists, the US reduces their clandestine support and severely impairs their ability to travel freely, thereby hampering terrorist's ability to plan and execute terrorist attacks. Again, the information from the five case studies disputes this claim. The notion that US pursuit of the terrorists hampered their ability to operate is contradicted by the exploits of Ramzi Yousef between the bombing of the WTC and his capture, slightly less than two years later. In that short period of time Yousef traveled to at least four countries (Pakistan, Iran, Thailand and the Philippines) and planned eight terrorist operations, of which three were directed against the United States (the assassination of President Clinton, the destruction of eleven US airliners over the Pacific Ocean and flying a plane into CIA headquarters).

Osama bin Laden's ability to operate for so many years is also evidence of the fallacy of the concept that the law enforcement approach hampers terrorist actions. Although it is now widely believed that he played a part in the WTC bombing and the Khobar Towers attack, the first concrete evidence of his involvement in attacks on the US came after the 1998 attack on the US embassies in Africa. From the time of his involvement in that attack he eluded US efforts to capture him for three years. During that time he was still able to plan and execute the bombing of the USS Cole and the September 2001 attacks in the US. Table 3 illustrates this problem.

	Time from Attack to Capture	Actions of Terrorists During This Time
Pan Am	10 Years	House Arrest in Libya (not confirmed)
WTC	2 Years (Ramzi Yousef)	Planned 8 Attacks, Traveled to 4 Countries
Khobar Towers	5 Years (Indictments Only)	Half held in Saudi Arabia, Other Half: Actions Unknown
US Embassies	1 Day to 1 Year (5 men) 17 Others remain at large	Planned USS Cole bombing & Sept 2001 Attacks
USS Cole	No Indictments to date	Perpetrators killed in bombing, Actions of others unknown

Table 3. Timelines for Post-Attack Actions

### **3. Building a Criminal Case**

A final problem of the law enforcement approach, noted in the analysis of the five cases studied here, was the simple difficulties in building a criminal case against international terrorists. In order to relate to the difficulties involved in building a case against international terrorists, imagine the prosecution of people involved in a mafia assassination. The two people usually sought by law enforcement are the “hit man” and the mafia boss who ordered the killing. It is easier, using forensic and eyewitness evidence, to build a case against the hit man than to build a case of conspiracy against the mafia boss who gave the order. The same sorts of problems confront the investigators in a terrorist attack. With respect to this study, the nature of this problem actually evolved during the period from 1988 to 2000.

In the Pan Am flight 103 and WTC bombings, the people who were eventually caught and tried actually planned and carried out the attacks. The court documents identify Abdel Basset Ali Al-Megrahi and Ramzi Yousef as the primary planners and perpetrators of their respective bombing. This meant that by prosecuting these two, along with their accomplices, the US was, essentially, dealing with both masterminds and perpetrators of the attack. In the Khobar Towers and African embassies bombings, the perpetrators were not the masterminds, merely foot soldiers for the terrorist cause. This meant that while the case built against the perpetrators was relatively strong, the investigator’s ability to indict the masterminds, in these cases believed to be Iranian Intelligence operatives and Osama bin Laden respectively, was almost nothing.

The final evolution of this process was the bombing of the USS Cole, where the perpetrators killed themselves in the process of carrying out the attack. In this case the investigators were left with no perpetrators to investigate, only people who must be implicated in a conspiracy role, the harder of the two cases to prove. While this is, no doubt, a simplified way of looking at the problem, it must be remembered that the biggest difference between a mafia killing and an international terrorist attack is the fact that in an international terrorist attack, both the attack itself and the conspirators are more than likely in foreign countries, where the ability of the US investigators to gather evidence

and arrest the terrorists is directly proportional to the amount of cooperation received by those countries.

#### D. CONCLUSIONS

After comparing the advantages of the law enforcement approach to combating terrorism with the facts of the five case studies, there can be little doubt that what the law enforcement approach delivers is not what it promises. Whether evaluated using the requirements for an effective counter-terrorist policy as outlined in this thesis, or law enforcement's own measures of effectiveness, the approach used exclusively from 1988 to 2000 did not meet the needs of the US for a policy to combat terrorism. The difficulties encountered during the investigation of the five terrorist attacks studied in this work as well as the problems associated with building a criminal case against the perpetrators and, especially, the masterminds of these attacks significantly reduced the probabilities of a successful indictment. This fact, when coupled with the low probability of capture and extradition to the US and the relatively short sentences given in these cases, did not constitute any real deterrent to the dedicated terrorist. More importantly, an approach of this type presents *absolutely no deterrence* to the terrorist, of the type seen in the attacks on the USS Cole and the September 2001 attacks, who is not only willing, but committed, to die in the execution of his mission. Furthermore, the individualistic approach of law enforcement completely eliminates the possibility of punishing the states that almost always support, either explicitly or tacitly, these terrorists.

A comprehensive approach to combating terrorism must include measures that effectively deter the masterminds of these attacks, the foot soldiers who carry them out, and the states who help them. The effective approach must also defend against those terrorists who cannot be deterred by actively seeking to stop them before they complete their quest to kill Americans.

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